TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~449.~~ 440

THE UNITED STATES, APPELLANTS,

vs.

THE HEIRS OF JUAN BAUTISTA VIGIL, DECEASED, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

TRANSCRIPT FILED APRIL 26, 1870.—CERTIORARI AND RETURN FILED JULY 20, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 449.

THE UNITED STATES, APPELLANTS,

vs.

THE HEIRS OF JUAN BAUTISTA VIGIL, DECEASED, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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a THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the supreme court of the Territory of New Mexico, greeting:

Whereas in a certain suit in said supreme court between The Heirs of Juan Bautista Vigil, deceased, Antonia José Rivera, and José Miguel Houck, complainants, and the United States, defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"All the proceedings in the said cause had since the sixth day of April, 1868, the date of the certificate of the clerk of said court, attached to the transcript of record now lodged in the clerk's office of this court, and particularly a transcript of the record of the proceedings in the said supreme court of the Territory of New Mexico, allowing an
b appeal in said case nunc pro tunc to the Supreme Court of the United States:"

You therefore are hereby commanded that, searching the records and proceedings in said cause, you certify "all the proceedings in the said cause had since the sixth day of April, 1868, the date of the certificate of the clerk of said court, attached to the transcript of record now lodged in the clerk's office of this court, and particularly a transcript of the record of the proceedings in the said supreme court of the Territory of New Mexico, allowing an appeal in said case nunc pro tunc" to the Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, A. D. 1869.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Issued 3rd June, 1870.

c *The answer of the judges of the supreme court of the Territory of New Mexico, named in the foregoing writ.*

A certified transcript of the record of the judgment and proceedings mentioned in the foregoing writ, with all things touching the same, as fully and entirely as they remain of record, is annexed to the said writ and herewith returned, as therein commanded.

Attest:

[SEAL.] W'M BREEDEN,
Clerk of the Supreme Court of the Territory of New Mexico.

SANTA FÉ, NEW MEXICO, *July 6th*, 1870.

(Indorsed:) Supreme Court U. S., December term, 1869. No. 449. United States, appellants, vs. Heirs of J. B. Vigil, (dec'd.) Certiorari.

Filed in my office this 26th day of June, 1870.

W'M BREEDEN,
Clerk Supreme Court New Mexico.

d . THE LEGAL REPRESENTATIVES OF JUAN B. Vigil, deceased, Antonio José Rivera, and Solomon Houck
vs.
THE UNITED STATES.
} Suit for confirmation of title to land.

To the plaintiffs in the above-entitled cause, or to Jacob Houghton and John S. Watts, their attorneys:

Take notice that at the January A. D. 1870 term of the supreme court for the Territory of New Mexico, an appeal was granted in the above entitled cause to the Supreme Court of the United States from the decree and judgment rendered in your favor therein.

You are therefore hereby cited and admonished to be and appear at the next ensuing term of said Supreme Court of the United States, to be held at the city of Washington on the first day of the said term, to show cause, if any there be, why the said judgment and decree should not be reversed.

Witness the Hon. Joseph G. Palen, chief justice of the supreme court
e of the Territory of New Mexico, this 23rd day of April, A. D. 1870.

J. G. PALEN,
Chief Justice Supreme Court New Mexico.

(Indorsed:) The legal representatives of Juan B. Vigil, deceased, Antonio José Rivera, and Solomon Houck, vs. The United States. Citation on appeal.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I do hereby certify and make oath that I have served the within citation, by exhibiting the same, and delivering a true copy thereof to the within-named Jacob Houghton, at his office in the city of Santa Fé, Territory of New Mexico, this 23rd day of April, A. D. 1870.

H. M. DAVIS,
Dep't U. S. Marshal N. M.

Subscribed and sworn to before me this 23rd day of April, A. D. 1870, at Santa Fé, New Mexico, and I certify that H. M. Davis is a duly appointed and qualified deputy marshal for the district of New Mexico.

[SEAL.]

WM BREEDEN,
Clerk Supreme Court New Mexico.

(Indorsed:) Citation and return filed in my office this 23rd day of April, A. D. 1870.

WM BREEDEN,
Clerk Supreme Court New Mexico.

1 In the supreme court of the Territory of New Mexico.

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES.
} Suit for confirmation of title to land.

Be it remembered that on the 25th day of October, A. D. 1860, the following petition was filed in the office of the clerk of the supreme

court of the Territory of New Mexico; which said petition is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

Supreme court of the Territory of New Mexico, January term, A. D. 1861.

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO JOSÉ RIVERA, and JOSÉ MIGUEL HOUCK
vs.
2 THE UNITED STATES.

To the hon. the judges of the supreme court of the Territory of New Mexico, at the January term of said court, A. D. 1861:

Your petitioners, Juan Bautista Vigil y Alarid, a resident of Santa Fé, New Mexico; Antonio José Rivera, also a resident of Santa Fé; and José Miguel Houck, a resident of Westport, in the State of Missouri, would most respectfully state to the court that, on the 28th day of December, 1845, the said petitioners presented to Don Manuel Armijo, then the governor of the department of New Mexico, their petition for a grant of unoccupied land situate in said department of New Mexico, at a place called the Jornada del Muerto, having the following boundaries, to wit: On the northwest the little table land of the Contadero; on the west the Del Norte River; on the south the old site of Doña Ana, and on the east the range of the Sandia Mountains, with its tributaries in that direction; and the said petitioners proposed that in case said grant should be made to them, and they placed in possession, that within the shortest possible period not exceeding five years, thereafter, the
3 said petitioners would perform and comply with the following conditions subsequent: First, to construct two wells at the most central points of the Jornada, with their respective tanks. Second, to establish two factories, in which delinquents sentenced for crimes might be received. Third, to have two field-pieces and a sufficient number of arms for the workmen to repel the hostile Indians, in case they should revolt, as was then the case.

Your petitioners further state that, on the 10th of January, 1846, the said Manuel Armijo, governor of said department, presented said petitioners to the departmental assembly of New Mexico, and said assembly granted to said Antonio José Rivera and Juan Bautista Vigil y Alarid the land asked for, at the place known as the Jornada del Muerto, for the purpose of constructing wells and cultivating the land, as far as their means would permit, without being entitled to an exclusive right to pasture, and debarring from any of the privileges of said grant the foreigner Michael Houck, as he was prohibited by article ninth of the law of March 11th, 1842, from acquiring lands in the frontier department without the previous consent of the supreme government.

4 Your petitioners further state that, in conformity with said grant, the said Governor Armijo, on the 4th day of February, 1846, directed one José Albino Chacon, justice and judge of original jurisdiction of the capital, Santa Fé, to place said Juan Bautista Vigil y Alarid and Antonio José Rivera in possession of the land granted to them, and also directed that Michael Solomon Houck, on presentation of proper naturalization papers, should be considered as one of the grantees.

Your petitioners would further state that, in pursuance of said order, the said José Albino Chacon, on the 6th day of February, 1846, acknowl-

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Whereas in a certain suit in said supreme court between The Heirs of Juan Bautista Vigil, deceased, Antonia José Rivera, and José Miguel Houck, complainants, and the United States, defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"All the proceedings in the said cause had since the sixth day of April, 1868, the date of the certificate of the clerk of said court, attached to the transcript of record now lodged in the clerk's office of this court, and particularly a transcript of the record of the proceedings in the said supreme court of the Territory of New Mexico, allowing an
b appeal in said case nunc pro tunc to the Supreme Court of the United States:"

You therefore are hereby commanded that, searching the records and proceedings in said cause, you certify "all the proceedings in the said cause had since the sixth day of April, 1868, the date of the certificate of the clerk of said court, attached to the transcript of record now lodged in the clerk's office of this court, and particularly a transcript of the record of the proceedings in the said supreme court of the Territory of New Mexico, allowing an appeal in said case nunc pro tunc" to the Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, A. D. 1869.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Issued 3rd June, 1870.

c *The answer of the judges of the supreme court of the Territory of New Mexico, named in the foregoing writ.*

A certified transcript of the record of the judgment and proceedings mentioned in the foregoing writ, with all things touching the same, as fully and entirely as they remain of record, is annexed to the said writ and herewith returned, as therein commanded.

Attest:

[SEAL.] WM BREEDEN,
Clerk of the Supreme Court of the Territory of New Mexico.

SANTA FÉ, NEW MEXICO, *July 6th*, 1870.

(Indorsed:) Supreme Court U. S., December term, 1869. No. 449. United States, appellants, vs. Heirs of J. B. Vigil, (dec'd.) Certiorari.

Filed in my office this 26th day of June, 1870.

WM BREEDEN,
Clerk Supreme Court New Mexico.

d THE LEGAL REPRESENTATIVES OF JUAN B. Vigil, deceased, Antonio José Rivera, and Solomon Houck
vs.
THE UNITED STATES.
} Suit for confirmation of title to land.

To the plaintiffs in the above-entitled cause, or to Jacob Houghton and John S. Watts, their attorneys:

Take notice that at the January A. D. 1870 term of the supreme court for the Territory of New Mexico, an appeal was granted in the above entitled cause to the Supreme Court of the United States from the decree and judgment rendered in your favor therein.

You are therefore hereby cited and admonished to be and appear at the next ensuing term of said Supreme Court of the United States, to be held at the city of Washington on the first day of the said term, to show cause, if any there be, why the said judgment and decree should not be reversed.

Witness the Hon. Joseph G. Palen, chief justice of the supreme court
e of the Territory of New Mexico, this 23rd day of April, A. D. 1870.

J. G. PALEN,
Chief Justice Supreme Court New Mexico.

(Indorsed:) The legal representatives of Juan B. Vigil, deceased, Antonio José Rivera, and Solomon Houck, vs. The United States. Citation on appeal.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I do hereby certify and make oath that I have served the within citation, by exhibiting the same, and delivering a true copy thereof to the within-named Jacob Houghton, at his office in the city of Santa Fé, Territory of New Mexico, this 23rd day of April, A. D. 1870.

H. M. DAVIS,
Dep't U. S. Marshal N. M.

Subscribed and sworn to before me this 23rd day of April, A. D. 1870, at Santa Fé, New Mexico, and I certify that H. M. Davis is a duly appointed and qualified deputy marshal for the district of New Mexico.

[SEAL.] WM BREEDEN,
Clerk Supreme Court New Mexico.

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WM BREEDEN,
Clerk Supreme Court New Mexico.

1 In the supreme court of the Territory of New Mexico.

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES.
} Suit for confirmation of title to land.

Be it remembered that on the 25th day of October, A. D. 1860, the following petition was filed in the office of the clerk of the supreme

court of the Territory of New Mexico; which said petition is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

Supreme court of the Territory of New Mexico, January term, A. D. 1861.

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO JOSÉ RIVERA, and JOSÉ MIGUEL HOUCK
vs.
2 THE UNITED STATES.

To the hon. the judges of the supreme court of the Territory of New Mexico, at the January term of said court, A. D. 1861:

Your petitioners, Juan Bautista Vigil y Alarid, a resident of Santa Fé, New Mexico; Antonio José Rivera, also a resident of Santa Fé; and José Miguel Houck, a resident of Westport, in the State of Missouri, would most respectfully state to the court that, on the 28th day of December, 1845, the said petitioners presented to Don Manuel Armijo, then the governor of the department of New Mexico, their petition for a grant of unoccupied land situate in said department of New Mexico, at a place called the Jornada del Muerto, having the following boundaries, to wit: On the northwest the little table land of the Contadero; on the west the Del Norte River; on the south the old site of Doña Ana, and on the east the range of the Sandia Mountains, with its tributaries in that direction; and the said petitioners proposed that in case said grant should be made to them, and they placed in possession, that within the shortest possible period not exceeding five years, thereafter, the
3 said petitioners would perform and comply with the following conditions subsequent: First, to construct two wells at the most central points of the Jornada, with their respective tanks. Second, to establish two factories, in which delinquents sentenced for crimes might be received. Third, to have two field-pieces and a sufficient number of arms for the workmen to repel the hostile Indians, in case they should revolt, as was then the case.

Your petitioners further state that, on the 10th of January, 1846, the said Manuel Armijo, governor of said department, presented said petitioners to the departmental assembly of New Mexico, and said assembly granted to said Antonio José Rivera and Juan Bautista Vigil y Alarid the land asked for, at the place known as the Jornada del Muerto, for the purpose of constructing wells and cultivating the land, as far as their means would permit, without being entitled to an exclusive right to pasture, and debarring from any of the privileges of said grant the foreigner Michael Houck, as he was prohibited by article ninth of the law of March 11th, 1842, from acquiring lands in the frontier department without the previous consent of the supreme government.

4 Your petitioners further state that, in conformity with said grant, the said Governor Armijo, on the 4th day of February, 1846, directed one José Albino Chacon, justice and judge of original jurisdiction of the capital, Santa Fé, to place said Juan Bautista Vigil y Alarid and Antonio José Rivera in possession of the land granted to them, and also directed that Michael Solomon Houck, on presentation of proper naturalization papers, should be considered as one of the grantees.

Your petitioners would further state that, in pursuance of said order, the said José Albino Chacon, on the 6th day of February, 1846, acknowl-

edged the presentation to him of said grant and order for the possession to be given of the said lands so granted. Your petitioners further state that on the 15th day of March, 1846, in conformity with said decree of the 10th of January, 1846, and order of 4th February, 1846, the said José Albino Chacon did place the said Juan Bautista Vigil y Alarid and José Antonio Rivera in possession of the said land, with the understanding that if José Miguel Solomon Houck should present the proper naturalization papers, he should be considered one of the proprietors, holding equal rights with Messrs. Vigil and Rivera.

5 Your petitioners further state that, before any further steps were taken in the case, war broke out between the United States of America and the republic of Mexico, and Gen'l Kearney, on the 18th day of August, 1846, took possession of the said department of New Mexico in the name of the United States, and annexed it to the United States under the name of the Territory of New Mexico, and that from that date up to the present time it has so continued to belong to, and be governed by the authorities of, the United States.

Your petitioners further state that under the new government provided by Gen'l Kearney for said Territory the said José Albino Chacon was duly sworn to bear allegiance to the laws and government of the United States, and was continued in office as justice of the peace by Gen'l Kearney, and remained in the discharge of the duties of said office until the 21st of September, 1846, when said office was resigned by him.

Your petitioners further state that on the 16th day of September, 1846, the said José Miguel Solomon Houck, having presented his naturalization papers before the court of the said Chacon, was duly ad-

6 mitted as a participant in, and one of the proprietors of, said land with the same rights as the other partners, Juan Bautista Vigil y Alarid and Antonio José Rivera.

Your petitioners would further state that a dispute having arisen between Don Manuel Armendaris and the heirs of Don Francisco Xavier Chavis, the governor of the said Territory directed that the said petitioners should not proceed to construct the said wells on the said lands until the said dispute was decided.

Your petitioners further state that the war existing between the United States and the republic of Mexico was ended by the treaty of peace between said republics, made February 2d, 1848. Your petitioners further state that, under and by virtue of the 8th and 9th articles of said treaty, it was stipulated between the said republics that the Mexicans now established in Territories previously belonging to Mexico, and which remain for the future within the limits of the United States as defined by said treaty, should be free to continue where they then resided, or remove at any time to the Mexican republic, retaining the property which they possessed in said Territory, or disposing thereof and removing the proceeds wherever they pleased, without being

7 subjected on that account to any contribution, tax, or charge whatever.

Your petitioners further state that, with the view of ascertaining what titles existed to lands in New Mexico, General Kearney, shortly after taking possession of New Mexico, required that said titles be produced and registered, and the said title of your petitioners was duly produced and registered, in conformity with said law, in "Book of Registers of Lands," letter "C," pages 13, 14, and 15.

Your petitioners further state that, with the view of carrying out the provisions of said treaty, and conferring to the people of New Mexico the titles to their lands, the Congress of the United States, on

the 22d day of July, 1854, passed an act providing that the surveyor general of New Mexico should proceed to investigate and report upon the land titles of New Mexico, with the opinion of said surveyor general as to the validity of said titles, in order that such as were valid might be confirmed by Congress, and such as were invalid might be rejected.

Your petitioners further state that on the 23d day of May, 1859, the said petitioners presented to the Hon. William Pelham, then sur-
8 veyor general of the Territory of New Mexico, their petition and title to the lands aforesaid, asking that the same be confirmed to them.

Your petitioners further state that the authenticity of said title papers was duly proved, oral testimony introduced and received touching said title, and the case finally submitted to the said surveyor general for decision on the 18th day of July, 1859, and on the 26th day of July, 1859, the said surveyor general decided that the claim of your petitioners was entirely void of merit, and that the land claimed belonged rightfully to the public domain of the United States, because no compliance had been made by your petitioners with conditions specified in said grant to be performed by your petitioners, as appears by papers herewith filed, marked "D."

Your petitioners further state that said surveyor general rejected said claim, and ordered the same to be transmitted to Congress for its action in the premises. Your petitioners further state that from the said decision of said surveyor general the said petitioners, on the 26th of July, 1859, took an appeal to Congress.

Your petitioners would further state that all the above facts will more fully and at large appear by reference to a duly certified copy of
9 the proceedings had before the said surveyor general in said cause, from the filing of the petition and title to the final decision and appeal in said case, hereby made a part of this petition, and marked as Exhibits "A" herein, No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Your petitioners further state that after said decision of the surveyor general and the appeal therefrom, your petitioners found the proceedings and report of the committee of the departmental assembly made 10th of January, 1846, at the time of said grant, from which it appears that it was not the intention of said committee that said grant should be incumbered, for the reasons therein stated, with any conditions, as will appear by a copy of the report of said committee, hereby made a part of this petition, marked Exhibit "H," herein. Your petitioners further state that, in conformity with the recommendation of said committee, in confirming said grant on the said 10th day of January, 1846, it was so confirmed to the said Vigil and Rivera, without any condition, reservation, or incumbrance, except that the right of pasture upon the lands aforesaid should be common and not exclusive; which condition, being inconsistent with the perfect nature of the grant in fee, is inoperative and void.

Your petitioners further state that upon the presentation of the
10 said claim to the Congress of the United States, that body, on the 21st day of June, 1860, passed an act upon the subject of said claim, the 5th section of which act is as follows, to wit:

"SEC. 5. *And be it further enacted*, That it shall or may be lawful for the said Juan B. Vigil, or any person claiming title under him, to institute suit against the United States for the lands claimed and embraced in said claim number twenty-six, not confirmed under the provisions of the third section of this act; said suit to be instituted in the supreme court of the Territory of New Mexico, to be defended by the

district attorney of the United States for said Territory, under the direction of the Attorney General of the United States, with the right of appeal to either party from the decision of said supreme court to the Supreme Court of the United States, if such appeal be asked for within one year from the rendition of the judgment in said supreme court of the Territory of New Mexico, and not thereafter: *Provided*, That if the suit authorized by this section be not instituted within two years from the passage of this act the said claimants shall be presumed to have abandoned all right or title to the lands embraced in said claim number twenty-six, and said lands shall thenceforth be held and deemed to be public lands belonging to the United States: *And provided*
11 *further*, That in the determination of the suit authorized to be instituted by the terms of this section, the courts shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States so far as they are applicable."

Your petitioners aver that said land specified in said grant is located within the county of Doña Ana, New Mexico, and has never been surveyed according to the boundaries mentioned in said grant, and the quantity of land included with said landmarks is unknown to your petitioners, but that said landmarks designated as the boundaries of said grant are well known, and the quantity of land easily known by actual survey.

Your petitioners further aver that the dispute as to the northern boundary of said grant was not settled between your petitioners and the heirs of Pedro Armendaris until the year 1859, and was then settled by the abandonment, upon the part of your petitioners, of all claim to any land north of the southern boundary of the grant of said Armendaris, by means of which abandonment near one-half of the land
12 included within the boundaries of your petitioners was lost to them, and has been confirmed to the heirs of the said Pedro Armendaris.

Your petitioners further state that said lands have been surveyed as public lands with a full knowledge of the fact that your petitioners were the owners of said land, and had duly registered their title thereto, but that no part of said lands have been sold, or otherwise disposed of by the United States, and that they still remain unoccupied and unclaimed by any one except your petitioners on the one side and the United States on the other.

Your petitioners further aver that on account of the hostile condition of the Indians in the vicinity of said grant, a compliance with the conditions of said grant, if a compliance had been required by law, was impossible within the next five years succeeding said grant. Your petitioners further aver that if said grant was encumbered with any conditions, they were conditions subsequent, and that a non-performance of such conditions did not divest your petitioners of the vested right in said lands conferred upon them by said grant. Your petitioners further aver that the performance of said conditions was stopped by the act of the constituted authorities of the government, and hence no for-
13 feiture of the rights of your petitioners accrued.

Your petitioners further aver that the departmental assembly dispensed with the performance of said supposed conditions, and hence no forfeiture of the title of your petitioners has taken place. Your petitioners further aver that the change of sovereignty over the lands aforesaid under the said treaty of Guadalupe Hidalgo, before the expira-

tion of the five years after the said grant was made, within which time said conditions were to have been performed, rendered the performance of such conditions unnecessary upon the part of your petitioners. Your petitioners aver that at the date of the ratification of the treaty of Guadalupe Hidalgo they had a vested interest in said land, that the same had not been denounced or regranted by the republic of Mexico to any others. Your petitioners further aver that they are the equitable owners of said lands, and, against the United States, have a right to a legal title thereto. Your petitioners further aver that they are the legal owners in fee of the lands aforesaid so granted to them, and, as evidence of their title, have a right to the issuance of a patent therefor from the said United States. Your petitioners further aver that the title of said lands is secured to them by the treaty of Guadalupe Hidalgo, by the laws of nations, by the laws, usages, and customs
14 of the republic of Mexico, and the decisions of the Supreme Court of the United States applicable to such cases.

Your petitioners therefore ask that the United States be made a party defendant in this case; that the United States be required to admit or deny the facts set forth in the foregoing petition.

Your petitioners further ask the court to take full and complete jurisdiction of the above cause, under and by virtue of the said 5th section of said act of Congress approved June 21st, 1860, and upon the premises being found true, the said petitioners ask the court to decree as follows:

First. That the legal title to said lands is in the said petitioners.

Second. That the said lands be surveyed in conformity with law.

Third. That a patent for said lands, when so surveyed, be issued upon the part of the United States and delivered to your petitioners.

Fourth. That the United States pay the costs herein.

Fifth. That the said petitioners have such other and further
15 relief in the premises as the justice and equity of their case may demand.

And, as in duty bound, they will ever pray, &c.

J. HOUGHTON,
J. S. WATTS,
J. HOWE WATTS, &
W. C. JONES,
Att'ies for Claimants.

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé:

I, Juan Bautista Vigil y Alarid, upon my oath, state that the matters and things in the foregoing petition contained, so far as stated from my own knowledge, are true in substance and in fact, and so far as stated from the information of others, I believe them to be true.

JUAN BAUTISTA VIGIL Y ALARID Y COMP'A. [RUBRIC.]

Sworn to and subscribed before me this 25th day of October, 1860.

SAM'L ELLISON, *Clerk.*

Upon which said petition are the following endorsements, to wit:

Juan B. Vigil et al. vs. The United States. Petition. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk. Watts, Houghton & Watts, att'ies.

16 And with the said petition were filed the following papers and exhibits, which are in the words and figures following, to wit:

"A."

Proclamation.

To the inhabitants of New Mexico by Brigadier General S. W. Kearney, commanding the troops of the United States in the same:

As by the act of the republic of Mexico a state of war exists between that government and the United States, and as the undersigned, at the head of his troops, on the 18th inst., took possession of Santa Fé, the capital of the department of New Mexico, he now announces his intention to hold the department, with its original boundaries, (on both sides of the Del Norte,) as a part of the United States, and under the name of the "Territory of New Mexico."

The undersigned has come to New Mexico with a strong military force, and an equally strong one is following close in his rear. He has more troops than is necessary to put down any opposition that can possibly be brought against him, and therefore it would be but folly or madness for any dissatisfied or discontented persons to think of resisting him.

17 The undersigned has instructions from his government to respect the religious institutions of New Mexico, to protect the property of the church, to cause the worship of those belonging to it to be undisturbed, and their religious rights in the amplest manner preserved to them; also to protect the persons and property of all quiet and peaceable inhabitants within its boundaries against their enemies—the Eutaws, the Navajoes, and others—and when he assures all that it will be his pleasure as well as his duty to comply with those instructions, he calls upon them to exert themselves in preserving order, in promoting concord, and in maintaining the authority and efficiency of the laws. And he requires of those who have left their homes and taken up arms against the troops of the United States, to return forthwith to them, or else they will be considered as enemies and traitors, subjecting their persons to punishment, and their property to seizure and confiscation for the benefit of the public treasury.

It is the wish and intention of the United States to provide for New Mexico a free government, with the least possible delay, similar to those in the United States, and the people of New Mexico will then be called upon to exercise the rights of freemen in electing their own repre-

18 sentatives to the territorial legislature. But until this can be done, the laws hitherto in existence will be continued until changed or modified by competent authority. And those persons holding offices will continue in the same for the present, provided they will consider themselves good citizens, and willing to take the oath of allegiance to the United States.

The undersigned hereby absolves all persons residing within the boundaries of New Mexico from any further allegiance to the republic of Mexico, and hereby claims them as citizens of the United States. Those who remain quiet and peaceable will be considered good citizens and receive protection; those who are found in arms, or instigating others, against the United States will be considered as traitors and treated accordingly.

Don Manuel Armijo, the late governor of the department, has fled from it; the undersigned has taken possession of it without firing a gun or

spilling a single drop of blood, at which he most truly rejoices, and for the present will be considered as governor of the Territory.

Given at Santa Fé, the capital of the Territory of New Mexico,
19 this 22nd day of August, 1846, and in the 71st year of the independence of the U. States.

S. W. KEARNEY,
Brig. General U. S. A.

By the governor:
JUAN BAUTISTA VIGIL Y ALARID.

THE UNITED STATES OF AMERICA,
Territory of New Mexico:

I, Alexander M. Jackson, secretary of said Territory, do hereby certify that the within and foregoing three pages contain a full, true, and perfect copy of the original proclamation of Brig. General S. W. Kearney, on file in my office.

In testimony whereof I have hereunto set my hand and seal of office this 20th day of June, A. D. 1859.

[SEAL.]

A. M. JACKSON,
Secretary of the Territory of New Mexico.

On which said paper is the following endorsement, to wit:

"A." Filed in open court on this day, 3d day of Jan'y, for the 20th day of October, 1860. Sam'l Ellison, clerk.

"A, No. 1."

UNITED STATES OF AMERICA,
Territory of New Mexico:

To the Hon'l William Pelham, surveyor general of the Territory of New Mexico:

20 Your petitioners, Juan Bautista Vigil y Alarid, Antonio José Rivera, and Michael S. Houck, the two first mentioned residents of the Territory of New Mexico, and the last mentioned a resident of the State of Missouri, respectfully represent that they are the claimants and legal owners in fee of a certain tract of land known as the grant or merced of Jornada del Muerto, situated in the counties of Socorro and Doña Ana, and bounded as follows: On the north by the little table-land of the Contadero; on the east by the Sandia Range of mountains, with its spurs; on the south the old site of Doña Ana, at Roblerito; and on the west by the Rio del Norte.

Said petitioners claim a perfect title to said land by virtue of a certain grant made by the departmental assembly on the 10th day of January, 1846, and confirmed on the 4th day of February of the same year by Governor Manuel Armijo, who, according to law, as governor of New Mexico, directed and authorized Albino Chacon, justice of original jurisdiction of the city of Santa Fé, and central district, to place the petitioners in possession; which act was duly performed on the 15th day of March, 1846, as will appear from the accompanying original documents from folio 1 to 7.

21 Your petitioners would further represent that Michael S. Houck, one of the original petitioners, signed José Miguel Houck, though excluded by the act of the departmental assembly of January 6th, 1846, (see folio 4 of the accompanying documents,) from interest in the grant, yet that said interest has to be extended to him upon his presenting his

papers of naturalization, (see decree of governor of the department, folio 5 of accompanying documents,) and for evidence that he did present said papers, and received in due form from Santiago Abren, departmental governor, a certificate of citizenship, (see folios 6 to 8, accompanying documents.) All of which places Michael S. Houck on the same footing in regard to this claim as the other two original grantees.

Petitioners claim that said grant was made according to law, according to the Spanish laws and regulations, which were declared and recognized by the government of Mexico to be in force and effect at that time. See collection of decrees and orders of the Cortes of Spain, published in Mexico by Mariano Galven in 1829, page 56, and from page 91 to 101, and also decrees of Mexico of June 4th, and Sept. 18th, 1823, pages 123 and 180, 2 vol., Collection de Decretas. See also Howard's Reports, page 24, vol. 1; 6 Peters, 691; Holcombe's Digest, 358 to 363.

22

The said claimants are unable to show the quantity of land contained in said tract, and it has never been surveyed, and can only show its extent by the bounds and well-known points and limits by which it is above described.

Petitioners herewith file as proof original documents marked in folios from 1 to 9, by which they hope to prove the justice of their claim both in law and equity, and that the same may be confirmed to them. Giving notice that on the north side of said land about twenty-seven or thirty miles are in dispute with other deeds appearing previously belong to the heirs of the late Pedro Armendaris, and to avoid dispute the original and present claimants have agreed that their northern boundary shall be the southern boundary called for by the deeds of the said Armendaris. All of which is most respectfully submitted by

J. HOUGHTON,
Att'y for Claimants.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

23 I certify that the foregoing is a true copy of the original on file in this office.

[SEAL.] A. P. WILBAR.

On which said paper is the following endorsement, to wit:

Exhibit "A," No. 1. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

"A, No. 2."

Sello tercero, [SEAL,] un peso.

Años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

EX'MO S'OR: Los individuos que suscriben esta solicitud animados del mas puro patriotismo y de ser utiles á la sociedad en que viven; haciendo uso del derecho de peticion y del que les faborese por las leyes vigentes de colonisacion en esta Republica Mejicana á que tienen el honor de pertenecer, como ciudadanos, y uno como naturalizado en la misma; con el respeto devido hacemos presente á la Ex'ma Asamblea Departamental, por conducto de V. E., la presente solicitud; contraida á pedir se nos merced por dicho honorable cuerpo en la forma ordinaria seg'n la facultad 5ª parte segundo q., le señala el artº. 134, de las vases or-

24 ganicas, el terreno conocido por la Jornada del Muerto poniendo por

linderos, la Mesita de Contadero, por el noroeste; por el oeste el Rio del Norte; por el sur, el parage antiquo de Doña Ana; y por el este la cordillera de la Sierra de Sandia y sus chorreras por dicho rumbo; conseguida la solicitud y puestos en posecion de dicho terreno, se comprometen solemnemente los q. firman, primero: á construir dos norias en los parajes mas sentricos de la Jornada, con sus correspondientes targeas para alibio y ancilio de los caminantes q. hasta la fecha han sufrido perdidas incalculables de bestias, caballares, mulares, y ganado mayor y menor de lana y pelo; lo q. es mas muchas victimas humanas q. há deborado la absoluta falta de agua, que tendrán segura los caminantes, á muy poca costa, estando en corriente dichas norias; segundo: con igual solemnidad ofresen plantar dos talleres de fabricas utiles al Departam'to, y en los cuales se recibirán los dilincuentes destinados por los jueces y autoridades del departamento y compurgar algun delito, conforme á lo q. sobre la materia disponen ó dispucieren las leyes de la materia y los decretos de dicha honorable asamblea; tercero: q. ambas quatro cosas q. deben perteneser a la maquinaria moderna, se obligan los licitantes á tenerlas concluidas en el termino mas pronto posible, y q. no pase de cinco años; obligandose tambien á tener un par de cañones de
25 artilleria y las armas suficientes al numero de hombres operarios que essistan p'a repeler á los Indios barbaros en caso de que como á la presente se hallan sublebados; por todo lo espuesto y por el bien y beneficio publico q. debe resultar de las obras propuestas en esta solicitud.

[Folio 4.] A. V. E. pedimos y suplicamos se sirva dár el curso correspondiente á esta solicitud, dispensandole la recomendation, q. de si arroja la petision, para alcanzar y conseguir la adquicicion del terreno á que se refiere la misma juramos, &a. Santa Fé, Diciembre 28 de 1845. Otro si decimos, que la mersenacion de terreno en la siempre memorable Jornado del Muerto, á q. se refieren los q. firman, esta solicitud, piden q. se les conseda sin perjuicio de tercero de mejor derecho, f'ha ut supra.

Por mi Patron, ANT. JOSÉ RIVERA. [RUBRIC.]
JUAN BAUTISTA VIGIL Y ALARID. [RUBRIC.]
JOSÉ MIGUEL HOUCK.
J. ALBINO CHACON.

SANTA FÉ, *Enero* 10 *de* 1846.

Pase esta instancia a la Ex'ma Asamblea p'a q. si considera util al bien procummunal las propociciones, que como condiciones del pedido y la concesiones hacen los postulantes; conceda el terreno, q. se
26 solicita, disponiendo q. conforme á las leyes se pongan los mismos en la posecion correspond'te; omitiendo el Gobierno recomendar á S. E. la Honorable Asamblea Departamental este pedido q. p'a su misma naturaleza y circumstancias hasta ahora no proyectadas, la traha en si mismo la referida solicitud.

ARMIJO. [RUBRIC.]
MIGUEL E. PINO, *Oficial* 1°.

SANTA FÉ, *En'o* 10, 1846.

Se les concede p'r esta asamblea á les Ciudadanos José Antonio Rivera y Juan Bautista Vigil y Alarid, el terreno pedido, en el punta conocido p'r la Jornado del Muerto, para abrir norias y hace una siembra hasta donde alcamen sus facultades quedan sin un d'ro esclucivo á los pastos; y sin q. en esta concecion tenga parte alguna el extrangero Miguel Houck p'r q. segun el art. 9° de la ley de 11 de M'zo de 1842 le

prohive adquirir terrenos en los depart'mentos fronterizas sin previo consentim'to del Sup'mo Gov'no de la nacion.

JOSÉ P. CHAVES. [RUBRIC.]
NICOLAS QUINT'A Y ROSAS, *S'rio.* [RUBRIC.]

[Folio 5.] Sello tercero, [SEAL,] cuatro reales.

Años de mil ochocientos cuarenta y seis y mil ochocientos cuarenta y siete.

27 En la ciudad de Santa Fé, capital del depart'm'to del Nuevo Méjico, á los seis dias del mes de Febrero de mil ochocientos cuarenta y seis, yo, el Ciudadano José Albino Chacon, alcalde 1º del ayuntamiento de esta ciudad y jues de 1ª instancia del distrito del centro, dijo: que mediante la superior orden q. con fecha cuatro del corriente mes me ha sido dirijida por la Secretaria de Gobierno; y habiendose presentado en este juzgado los ciudadanos Juan Bautista Vigil y Alarid, y Antonio José Ribera, con el decreto de concecion de terreno en la Jornada del Muerto que la Ex'ma Asamblea Departamental les dió en diez de Enero proximo pasado á d'hos individuos, y el E. S. Gobernador confirmó en su superior disposicion oficial de cuatro del corriente mes; en cuya virtud prosedare, por mi, el presente juez, á darse les la posecion corporal vel quasi, de d'ho terreno á los dos espresados agraciados vajo la condicion de que si D. Miguel Hauck presentare la constancia de q. habla la superior comunicacion arriba sitada se le declarará por participe á d'ho terreno en igualdad de d'ros á sus socios segun su escrito de peticion. Y por este auto asi lo probeo, mando y firmo con testigos de asistencia, doy fe.

J. ALBINO CHACON. [RUBRIC.]
De Asis'te: JESUS MARIA TAFOYA. [RUBRIC.]
De Asis'te: TELESFORO SALAZAR. [RUBRIC.]

28 SANTA FÉ, *Febrero 7 de* 1846.

Agregusia á estos autos copia testimoniada de la superior orden del E. S. Gob'or de cuatro del corriente segun se dispone por la misma. Decretelo asi, yo, el ciud'o José Albino Chacon, alcalde 1º, y jues de 1ª instancia del distrito, actuando con testigos de asistencios, doy fe.

J. ALBINO CHACON. [RUBRIC.]
De Asis'te: JESUS MARIA TAFOYA. [RUBRIC.]
De Asis'te: TELESFORO SALAZAR. [RUBRIC.]

SECRETARIO DE GOBIERNO DEL DEPARTAM'TO:

El Ex'mo S'r Gob'or me manda prevenir á V. q. tan luego como le sea presentada el documento q. acredite la mericuacion de terreno dado por la Ex'ma Asamblea Departamental en 10 de Enero proximo pasado, á D'n Juan Bautista Vigil y Alarid y á D. Antonio José Ribera, en el terreno conocido por la Jornada del Muerto, y de cuya donacion se escluye al Naturalisado Miguel Solomon Hauck, teniendolo por estrangero, y cuyo individuo, si presentare la correspondiente carta de naturaleza, en este caso será tenido por agraciado como á los otros interesados arriba mencionados, á quienes prosedera V. á poner en posecion de d'ho terreno, demandarles los linderos que señalarón en su peticion, por no haver alterado los la Ex'ma Asamblea, que solo restringio el d'ro escluibo de
los pastos q. serán comunes á los trancitantes q. ban y bienen por el
29 camino, y unica á los asendados ó pastores de este y de otros departamentos; previniendole, ademas, de orden de S. E. q. al documento de mersenacion agragare V. una copia legalizada de esta comu-

[Folio 6.] nicacion para q. sirva de resgardo á los interesados, y puedan estos con mayor seguridad emprender las obras de habrir norias que serán muy utiles al publico librandose de muchos perdidas y asegurando su vida y la de sus animales á muy poco costa.

Todo lo q. de orden de S. E. digo a V. para su cumplimiento y ejecucion, avisando del recibo de lo presente. Dios y libertad.

Santa Fè, Febrero 4, de 1846.

NICOLAS QUINTANA, *Prosecretario.*

S'or alcalde y juez de 1ª. instancia de esta capital Santa Fé.

Es copia fiel y legalm'te sacada de su original q. obra en la papelera de mi cargo, para archibarse, comprouvada y enmendado por mi y los de mi asistencia con quienes actuo por reseptorise—doy fe.

J. ALBINO CHACON, [RUBRIC.]

De asist'e: JESUS MARIA TAFOYA. [RUBRIC.]
De asist'e: TELESFORO SALAZAR. [RUBRIC.]

En cumplimiente del anterior anto y del superior orden q. antesedede cuatro del proximo pasado Febrero q. se cita y consta en testimonio legali zado arriba, he pasado de ida y vuelta, por el terreno, merced
30 daño a los espresados en el mismo decreto de la Ex'ma Asamblea; por los conocimientos practicos q. tengo del especial terreno de la Jornada del Muerto, y segun las leyes, seremonios y costumbres bien recibidos en este departamento, he prosedido á darlos la posecion q. de echo y de derecho les corresponde, por no habere presentado hasta la f'ha ningun tersero de mejor d'r'o, ni haber oposecion de parte al terreno baldio que sé les ha concedido en propiedad á los agraciados Juan Bautista Vigil y Antonio José Riberay Alarid los cuales que dan en posecion quieta y pacifica de d'ho terreno del que en señal de verdadera posecion han arrancado yerbas, sacetes, tirado piedras, dando boces de regocijo en loor del supremo gobierno mejicano, de cuya veniguidad les biene dicha propiedad de la cual reconoceran y defenderan por linderos fijos los puntos siguientes: por el norte la Mesita del Contadero; por el sur, el paraje antiguo de Doña Ana en Roblesito; por el oriente la cordillera de la Cierra de Sandia y sus chorreras en aquel rumbo; y por el poniente el Rio del Norte; en cuyos rumbos pondran los interesados las correspondientes mohoneras, para ebitar confuciones, con advertencion de q. si el socio de la compañia José Miguel Salomon Hauck presentaré la correspondiente carta de naturaleza será tenido por proprietario en igualdad de *de* d'r'os con los S'ores Vigil y Ribera, pudiendo à mas ad-
31 mitir ó no, segun les combenga por socios y compañeros en el citado terreno á la persona ó personas q. fuere su voluntad y lés meresea confianza. Y para la debida constancia, y que este documento les sirva de titulo de posecion á los agraciados doy el presente que autoriso y firmo á los quince dias del mes de Marzo de mil ochocientos cuarenta y seis, con los interesados y los testigos de mi asistencia con quienes actuo á falta de escribano doy fe.

D'r'os de posecion, 150 pesos.

J. ALBINO CHACON. [RUBRIC.]
JUAN BAUTISTA VIGIL Y ALARID. [RUBRIC.]
ANT'O JOSÉ RIVERA. [RUBRIC.]

De asist'a: TELESFORO SALAZAR. [RUBRIC.]
De asist'a: JESUS MARIA TAFOYA. [RUBRIC.]

[Folio 7.] En la ciudad de Santa Fé, capital del departam'te del Nuevo Méjico, en dies y seis de Septiembre de este año de

mil ochocientos cuarenta y seis. Yo, el ciudadano José Albino Chacon, alcalde 1ro y juez en 1a instancia de esta capital y su distrito, dije: que en virtud de haver presentado el S'r D. José Miguel Salomon Hauck, al jusgado de mi cargo, su carta de naturaleza agreguese esta original á estos documentos de donacion y tengare por lo mismo al enunciado
32 Hauck por participe y propetario y con los mismos d'r'os del terreno de la Jornada del Muerto arriba espresado, que los S'res socios D. Juan Bautista Vigil y Alarid y D. Antonio José Ribera, segun la determinacion de la Ex'ma Asamblea de dies de Enero de este año y official comunicacion del E. S. gobernador de cuatro de Febrero del mismo. Yo, el jues citado, asi lo probeaye actuando con testigos de asistencia a la notoria falta de escribano publico, doy feé.

J. ALBINO CHACON. [RUBRIC.]

De asist'a: JESUS MARIA TAFOYA. [RUBRIC.]
De asist'a: TELESFORO SALAZAR. [RUBRIC.]

RAZON.—Por haver reclamado Don Manuel Almendaris, vecino del departamento de Chihuahua parte del terreno constante en esta merced por el lindero del norte en la Mecita del Contadero, se ordena, de orden del E. S. Gob'or actual, á los dueños y proprietarios de la Jornada del Muerto, que no prosedan á los sacos de las norias hasta que sea concluido el pleito entre d'ho Armendaris y los herederos del finado Don Fran'co Xabier Chaves; y por la misma, el termino de los cinco años para la conclucion de las norias se empesará á contar desde el propio dia en que se fige el dicho lindero del norte; ya sea por parte del
33 dicho Armendares ó sus coolitigantes los herederos del d'ho finado Chaves. Y para que conste, puce esta razon que rubrique.

[RUBRIC.]

[Folio 8.]

Santiago Abreú, Gefe Politico del Territorio del Nuevo Méjico.

Haviendo José Miguel Houck, naturál del Estado de Virginia en los Unidos del Norte America cumplido con las condiciones y requicitos que previene la ley de 14 de Abril, de 1828, del congreso g'ral que arregla el modo con que dever considerse la carta de naturaleza á los estrangeros, y acompañando los documentos que lo acreditan, declaro al referido por las presentes naturalizado en los Estados Unidos Mejicanos, en virtud de la autoridad que por aquella ley de me confiere. Santa Fee, Agosto 18 de 1832.

Gratis.

SANTIAGO ABREU, [RUBRIC.]
TEODORIO QUINTANA, *S'rio.* [RUBRIC.]

ASAMBLEA DEPARTAMENTAL DE NUEVO MÉJICO.

La Asamblea Departamental ha resuelto, se debuelta á V. E. la presentacion de los ciudadanos Antonio José Rivera, Juan Bautiste Vigil y Alarid, y el estrangero Miguel Hauk, la cual ha decretada con-
34 forme con la resolucion de d'ha asamblea.

Reitero a V. E. las protestan de mi concideracion y aprecio. Dios y livertad.

Santa Fé, En'o 12, 1846.

J. MANUEL GALLEGOS, *P.* [RUBRIC.]
NICOLAS QUINT'A Y ROSAS, *S'rio.* [RUBRIC.]

Ex'mo S. Gov'or del Departam'to.

Of which said papers the following are the official translations made in the office of the surveyor general of the Territory of New Mexico to wit:

Seal third, [SEAL,] one dollar.

For the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MOST EXCELLENT SIR: The individuals who subscribe this petition, animated by the purest patriotism and a desire to be useful to the society in which they live, making use of the right of petition, and of those with which they are favored by the existing colonization laws of this Mexican Republic, to which they have the honor to belong as
35 citizens, and one of them naturalized in the same, with all due respect present this petition to the most excellent departamental assembly through your excellency, the object of which is to ask for a grant from said honorable body in the ordinary manner, according to the 5th faculty, part second, mentioned in article 134 of the organic basis, the land known as the Jornada del Muerto, with the following boundaries: On the northwest the little table land of the Contadero; on the west the Del Norte River; on the south the old site of Doña Ana; and on the east, the range of the Sandia Mountains, with its tributaries in that direction. After our petition has been granted and we are placed in possession of the land, the undersigned solemnly bind themselves: First, to construct two wells at the most central points of the Jornada, with their respective tanks, for the relief and aid of travellers, who up to this time have suffered incalculable losses of horses, mules, cattle, sheep, and goats, and, what is worse still, many human victims, who have perished for the absolute want of water, which travellers will be certain of obtaining at a very little expense when said wells are placed in working order. Second, with equal solemnity they offer to establish two factories, which will be of utility to the department, and in which
36 such delinquents as may be sentenced by the justices and authorities of the department to suffer for crime will be received, as the laws and decrees of the honorable assembly now or hereafter may direct in regard to the matter. Third, the petitioners bind themselves to have the four requisites which should belong to modern machinery, completed within the shortest possible period, not exceeding five years; obligating themselves also to have two field-pieces and a sufficient number of arms, equal to the number of workmen, to repel the hostile Indians in case they may revolt, as is now the case. In view of all that has been stated, and for the welfare and benefit of the public which will result from the works proposed in this petition, we pray and request your excellency to be pleased to transmit this petition through its proper channel, adding thereto a recommendation of the merits of the petition, in order to obtain the acquisition of the land therein referred to. We swear, &c.

SANTA FÉ, *December 28th*, 1845.

The undersigned further request that the grant to the land in the ever memorable Jornada del Muerto be made without injury to any third party who may show a better title, date ut supra.

For my patron,

(Signed) ANTONIO JOSÉ RIVERA.
(Signed) JUAN BAUTISTA VIGIL Y ALARID.
(Signed) JOSEPH M. HOUCK.
37 (Signed) JOSÉ ALBINO CHACON.

SANTA FÉ, *January 10th*, 1846.

This petition is referred to the most excellent assembly, in order that if they consider the offers which, in the form of conditions, the petitioners make, beneficial to the commonwealth, that the land asked for be granted to them, directing that they be placed in legal possession as the law directs. This government omits to recommend the petition to its excellency the honorable departmental assembly, as the nature and circumstances connected therewith, and never heretofore planned, is explained in said petition.

(Signed) ARMIJO.
(Signed) MIGUEL E. PINO, *First Clerk.*

SANTA FÉ, *Jan'y* 10, 1846.

This assembly grants to citizens Antonio José Rivera and Juan Bautista Vigil y Alarid the land asked for at the place known as the Jornada del Muerto, for the purpose of constructing wells and cultivating the lands, as far as their means will permit, without being entitled to an exclusive right to the pasture, and debarring from any of the privileges of this grant the foreigner, Michael Houck, as he is prohibited by
38 article 9th, of the laws of March 11th, 1842, from acquiring lands in the frontier departments, without previous consent of the supreme government of the nation.

(Signed) JOSÉ CHAVES.
(Signed) NICOLAS QUINTANA Y ROSAS,
Secretary.

Seal third, [SEAL,] four rials.

Years of 1846 and 1847.

In the city of Santa Fé, capital of the department of New Mexico, on the sixth day of the month of February, one thousand eight hundred and forty-six, I, citizen José Albino Chacon, first justice of the co-operation of this city, and judge of original jurisdiction of the central district, stated that, by virtue of the superior order of the fourth instant, addressed to me by the secretary of government, and citizens Juan Bautista Vigil y Alarid and Antonio José Rivera, having presented themselves at my office with the decree of the most excellent departamental assembly, of the tenth of January last, granting to them the Jornada del Muerto, and confirmed by his excellency the governor in his superior official order of the fourth instant, by virtue whereof I, the aforesaid justice, will proceed to give them the legal personal pos-
39 session of said land to the aforesaid grantees, on condition that if D. Miguel Houck shall present the record referred to in the superior communication above referred to he shall be declared as a participant in said land, with the same rights as his associates, as appears by their written petition, and by this decree he so provided, ordered, and signed by the attending witnesses. I certify.

(Signed) J. ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELESFORO SALAZAR.

SANTA FÉ, *February 7th*, 1846.

Let a certified copy of the superior order of his excellency the governor, of the fourth instant, be attached to these decrees, as directed therein. I, citizen José Albino Chacon, first justice and judge of origi-

nal jurisdiction of the district, so decreed, acting with attending witnesses.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS TAFOYA
Attending: (Signed) TELESFORO SALAZAR.

OFFICE OF THE SECRETARY OF THE GOVERNMENT.

His excellency the governor directs me to require you that so soon as the document is presented to you accrediting the grant made
40 by the most excellent departamental assembly on the 10th of January last past, to Don Juan Bautista Vigil y Alarid and Don Antonio José Rivera, to the land known as the Jornada del Muerto, from which the naturalized Michael Solomon Houck is excluded, he being a foreigner, who, upon presentation of the proper naturalization papers, shall in that case be considered as one of the grantees the same as those above mentioned, whom you will proceed to place in possession of said land, giving them the boundaries called for in their petition, not having been changed by the most excellent assembly, which only restricted the exclusive right & patronage which shall be free to travellers who may go and come over the road, and only to the owners of stock and shepherds of this and other departments, requiring you also by order of his excellency to attach to the granting deed a legal copy of this communication, for the protection of the parties interested, and give them more security to undertake the work of opening wells which will be of great utility to the public by preventing many losses, and securing not only their lives, but those of their animals at very little cost. Of all which you are informed by order of his excellency, for its due compliance and execution, acknowledging the receipt hereof. God and liberty.

Santa Fé, February 4th, 1846.

41 (Signed) NICOLAS QUINTANA,
Acting Secretary.

To the JUSTICE AND JUDGE OF ORIGINAL JURISDICTION,
of this capital, Santa Fé.

The above is a true and legal copy of the original among the papers placed under my charge for record, corrected and compared by me and those in my attendance, with whom I certify appointment. I certify.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELESFORO SALAZAR.

In obedience to the foregoing decree and the above superior order of the fourth of February last passed, a legal copy whereof appears above, I have gone backwards and forwards over the land granted to the parties referred to in the same decree of the most excellent assembly. From the practical knowledge I have of the aforesaid land of the Jornada del Muerto, and according to the well received laws, ceremonies, and customs in this department, I proceeded to give them the possession which in fact and by right they are entitled to, no third parties having a better title having presented themselves up to this time, and no opposition being made to the public land which has been granted in fee to the grantees
42 Juan Bautista Vigil y Alarid and Antonio José Rivera, who remain in the quiet and peaceful possession of said land, from which, in proof of lawful possession, they have pulled up weeds and grass, throwing stones, and crying aloud with joy in honor of the supreme

Mexican government, from whose generosity they received said possession, of which they acknowledge and will defend as permanent boundaries the following points: on the north the little table land of the Condero; on the south the old site of Doña Ana at Roblerito; on the east the range of the Sandia Mountain, and its tributaries on that side; on the west the river del Norte; in which directions the parties will erect the proper monuments to avoid confusion, with the understanding that if José Miguel Solomon Houck, one of the partners in the company, shall present the proper naturalization papers he shall be considered as one of the proprietors, holding equal rights with Messrs. Vigil and Rivera, being privileged further to admit as associates and partners in said land such persons as they may desire, and in whom they may have confidence; and in testimony thereof, and that this document may be to the grantees a deed of possession, I have executed this, which I authorize and sign on the fifteenth day of the month of March, one thousand eight
43 hundred and forty-six, with the parties interested and my attending witnesses, with whom I act in the absence of a notary. I certify.

Fees for placing in possession, 150 dollars.

(Signed) JOSÉ ALBINO CHACON.
(Signed) JUAN BAUTISTA VIGIL Y ALARID.
(Signed) ANTONIO JOSÉ RIVERA.

Attending: (Signed) TELESFORO SALAZAR.
Attending: (Signed) JESUS MARIA TAFOYA.

In the city of Santa Fé, capital of the department of New Mexico, on the sixteenth day of September, of this year, one thousand eight hundred and forty-six, I, citizen José Albino Chacon, first justice and judge of original jurisdiction of this capital and its district, stated that Don José Miguel Solomon Houck having presented his naturalization papers before the court under my charge, let the original thereof be attached to these granting documents, and therefore the said Houck is to be considered as a participant in and one of the proprietors of the above-mentioned land of the Jornada del Muerto, with the same rights as the other partners, Messrs. Juan Bautista Vigil y Alarid and Don Antonio José Rivera. According to the directions of the most excellent assembly,
44 dated the tenth day of January of this year, and the official communication of his excellency the governor of the fourth of February of the same year, I, the aforesaid justice so provided, acting with attending witnesses in the known absence of a notary public. I certify.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELESFORO SALAZAR.

NOTE.—Don Manuel Armendaris, resident of the department of Chihuahua, having claimed part of the land contained in this grant, on the northern boundary of the little table land of the Contadero, it is ordered, by direction of his excellency the present governor, that the owners and proprietors of the Jornada del Muerto shall not proceed to construct the wells until the suit between Armendaris and the heirs of the late Don Francisco Xavier Chaves shall be decided, and therefore the term of five years limited for the construction of the wells shall be counted from the day on which the said northern boundary shall be established, be it by the said Armendaris or the heirs of the late Chaves, the other parties

to the suit, and in order that it may so appear, I have made this
45 note, which I have rubricked.

[RUBRIC.]

Santiago Abrew, political chief of the Territory of New Mexico.

José Miguel Houck, native of the State of Virginia, in the United States of North America, having complied with the conditions and requirements provided by the law of the general congress of April 14th, 1828, which regulates the manner in which naturalization papers are to be granted to foreigners, and accompanying the documents by which he is identified, I hereby declare the above to be naturalized in the United Mexican States, by virtue of the authority in me vested by said law.

Santa Fé, August 18th, 1832.

Gratis.

(Signed) SANTIAGO ABREW.

(Signed) TEODOSIO QUINTANA,
Secretary.

DEPARTMENTAL ASSEMBLY OF NEW MEXICO.

The departamental assembly has resolved to return to your excellency the petition of citizens Antonio José Rivera, Juan Bautista Vigil, and the foreigner, Miguel Houck, which has been decreed in accord-
46 ance with the resolution of said assembly. I reiterate to your excellency the protestations of my consideration and esteem. God and liberty.

Santa Fé, January 12, 1846.

(Signed) JOSÉ MANUEL GALLEGOS,
President.

(Signed) NICOLAS QUINTANA Y ROSAS,
Secretary.

His Excellency the GOVERNOR *of the Department.*

SURVEYOR GENERAL'S OFFICE,
October 20th, 1860, *New Mexico.*

I certify that the foregoing is a correct and true copy of the original on file in this office.

[SEAL.] A. P. WILBAR,
Surveyor General.

On which said translations are the following endorsements, to wit:

Exhibit "A." No. 2." Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

"A."—No. 3.

JUAN BAUTISTA VIGIL ET AL.—*Jornada del Muerto.*

GASPAR ORTIZ Y ALARID, sworn:

47 Question. Have you any interest in this case?

Answer. I have none.

Question. How old are you?

Answer. I am 34 years old.

Question. What position did you hold under the departamental government of New Mexico when it was in existence?

Answer. I was an officer of the army.

Question. Did you know General Armijo?

Answer. I did. He was commander-in-chief and governor of the department.

Question. Do you know his signature when you see it?

Answer. I do.

Question. Is the signature on folio 3 of the documents (shown to him) Armijo's genuine signature?

Answer. It is his signature and rubric.

Question. Did you know José Albino Chacon; and what position did he hold?

Answer. I did. He was judge of original jurisdiction. Both of the above officers were in office in 1846.

Question. Do you know the signature of Albino Chacon?

Answer. I do. He was writing with me for one year. His signatures on folio 5 and folio 7 are genuine.

48 Cross-examined by attorneys for U. S.:

Question. Do you know the Jornada del Muerto?

Answer. I do.

Question. Have you passed over it since 1846; and if so, how often?

Answer. I have passed over it, I believe, 12 times.

Question. Have you ever seen any wells or conveniences for water, or other improvements, put upon any part of the land?

Answer. I have seen none.

Question. Have you ever seen any person in possession of the land embraced within the Ojo del Muerto and Roblero, at any time since 1846

Answer. I have not.

Question. Do you know the Mesa del Contadero and Roblero?

Answer. I do. I believe the distance to be no less than thirty-five leagues.

Question. How far is it from the Rio del Norte to the mountains to the east?

Answer. I believe it to be not less than ten leagues.

GASPAR ORTIZ.

Sworn & subscribed before me this 16th day of June, 1859.

W'M PELHAM, *Sur. Gen'l.*

49 MIGUEL E. PINO sworn:

Question. Have you any interest in this case?

Answer. None.

Question. What office did you hold under the Mexican government in the year 1846?

Answer. In the month of January I was chief clerk in the secretary's office.

Question. Is your signature on folio 3 of the document genuine?

Answer. It is.

Question. Did you know José Manuel Gallegos, and what position did he hold on January 12th, 1846?

Answer. He was a member of the departamental assembly.

Question. Did you know Nicolas Quintana y Rosas, and what office did he hold?

Answer. I did. He was secretary of the assembly.

Question. Are the signatures of the above individuals, on folio 1 & 4, genuine?

Answer. They are. I know them to be such.

Question. Did you know José Chaves, and what was his position in January, 1846?

Answer. I did. He was a member of the departamental assembly. He was the senior member, and governor by the ministration of the law. His signature on folio 4 is genuine.

50 Question. Did you know Santiago Abrew, and what office did he hold in 1832?

Answer. I did. About that time he was political chief. Teodosio Quintana was his secretary. Their signatures on folio 8 are genuine.

MIGUEL E. PINO.

Sworn & subscribed before me this 16th day of June, 1859.

W'M PELHAM, *Sur. Gen'l.*

CHARLES BLUMNER, sworn:

Question. Have you any interest in this case now pending?

Answer. I have not.

Question. Do you know the Jornada del Muerto?

Answer. I do.

Question. Do you know the Mesa del Contadero and Roblero?

Answer. I do.

Question. What is the distance between the Mesa del Contadero and Roblero?

Answer. I have always understood it to be about 100 miles.

Question. How far is it from the Rio del Norte to the mountains on the east?

Answer. I have no idea. It is a long distance; say from 60 to 100 miles.

51 Question. Have you ever seen any wells, or any other improvements on that land?

Answer. I have neither seen wells or any other improvements of any description up to the last time I passed over there in the fall of 1856.

Question. Were you in Santa Fé in 1846, when General Kearney arrived?

Answer. I was. He arrived here in August, 1846.

Question. When General Kearney took possession of the country, did the Mexican authorities continue to exist or not?

Answer. They all ceased, with the exception of one or two, who were reappointed. The governor was not here; he left before Gen'l Kearney arrived.

CH'S BLUMNER.

Sworn & subscribed before me this 16th day of June, 1859.

W'M PELHAM, *Sur. Gen.*

Jornada del Muerto.

DONACIANO VIGIL, sworn:

Question. Have you any interest in this case?

Answer. None.

Question. What position did you hold under the American government in September, 1846?

Answer. On the 22d September I was appointed secretary of the Territory.

52 Question. What position did you hold under the Mexican government previous to the 18th of August, 1846?

Answer. I was secretary to the military commander, and during that period was several times acting secretary of state.

Question. Did the prefects and other subordinate civil officers hold over under the American government by the sanction of General Kearney until the 22d September of the same year?

Answer. They did.

Question. What office did Juan Bautista Vigil hold during that period?

Answer. He was secretary of state at the time of the arrival of General Kearney. From that time to *to* the 22d September he was acting governor.

Question. Do you know the signature of Juan Bautista Vigil y Alarid?

Answer. I do. The signature to the letter accepting the resignation of the 1st justice of Santa Fé is genuine.

Question. Did you know Nicolas Quintana, & what was his occupation in February, 1846?

Answer. I did. He was first clerk in the secretary's office. I know his signature. His signature to the order directed to the first justice of Santa Fé is genuine.

53 Question. What position did José Albino Chacon hold from August 18th to September 22d, 1846?

Answer. He was an alcalde, acting as senior judge of the jurisdiction.

Question. Under what sanction did he exercise those functions?

Answer. By virtue of the proclamation of General Kearney, continuing in office all the civil employees until competent laws were promulgated.

Question. Do you know Albino Chacon's signature and rubric?

Answer. I do. His signature and rubric on the reverse of folio 7 are genuine.

Question. Under the Spanish and Mexican government, would an addition to a legal proceeding, executed by the same officer, and his rubric only attached, be considered as valid and hold good in law?

Answer. Official proceedings or agreements written immediately after a judicial act were considered to be sufficiently authenticated, and were held good in law, if rubricked only by the proper officer.

Cross-examined by U. S.:

54 Question. Did the officers of the Mexican government, in executing official documents and attaching their signatures thereto, ever place their rubric alone, without their names?

Answer. It was the legal practice, under the governments of Spain and Mexico, and is the practice up to the present time, that where the two parties were not present, or where only one was present, that the judge or justice taking cognizance of the case would simply make a memorandum note, affixing his rubric only. This memorandum served as a notice or summons to the absent party.

Question. Did the justices of the peace under the Spanish and Mexican government have the power and authority to alter or amend the acts of the governor in making grants, or suspend the compliance of conditions specified therein?

Answer. They did not.

Re-examined by counsel for claimants:

Question. If the justice of the peace, in giving judicial possession of lands granted by due course of law, ascertained, while complying with

his duty, that the lands so granted encroached upon lands already granted, in this case did he not have the right to suspend further proceedings in the case until the boundaries in dispute were settled?

55 Answer. If, while possession was being given, a claim was made against the grant so made, then all further proceedings were stopped until information was conveyed to the proper authorities, and the question in dispute was settled. He had the authority to give notice of the suspension until the matter was settled, or state the reasons why he did not comply with the instructions given him in the premises.

D. VIGIL.

Sworn & subscribed before me this 18th day of June, 1859.

W'M PELHAM, *Sur. Gen'l.*

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

On which said paper is the following endorsement, to wit:

Exhibit "A," No. 3. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

56 "A," No. 4.

Proclamation.

To the inhabitants of New Mexico, by Brigadier General S. W. Kearney, commanding the troops of the United States in the same:

As by the act of the Republic of Mexico a state of war exists between that government and the United States, and as the undersigned at the head of his troops on the 18th instant took possession of Santa Fé, the capital of the department of New Mexico, he now announces his intention to hold the department with its original boundaries (on both sides of the Del Norte) as a part of the United States, and under the name of the Territory of New Mexico.

The undersigned has come to New Mexico with a strong military force, and an equally strong one is following close in his rear. He has more troops than is necessary to put down any opposition that can possibly be brought against him, and therefore it would be but folly or madness for any dissatisfied or discontented persons to think of resisting him.

The undersigned has instructions from his government to respect the religious institutions of New Mexico, to protect the property of the church, to cause the worship of those belonging to it to be undisturbed, and

57 their religious rights, in the amplest manner, preserved to them.

Also to protect the persons and property of all quiet and peaceable inhabitants within its boundaries, against their enemies, the Utahs, the Navajoes and others, and when he assures all that it will be his pleasure as well as his duty to comply with those instructions, he calls upon them to exert themselves in preserving order, in promoting concord, and in maintaining the authority and efficacy of the laws. And he requires of those who have left their homes, and taken up arms against the troops of the United States, to return forthwith to them, or else they will be considered as enemies and traitors, subjecting their persons to punish-

ment, and their property to seizure and confiscation for the benefit of the public treasury.

It is the wish and the intention of the United States to provide for New Mexico a free government, with the least possible delay, similar to those in the United States, and the people of New Mexico will then be called upon to exercise the rights of freemen in electing their own representatives to the territorial legislature. But, until this can be done, the laws hitherto in existence will be continued until changed or
58 modified by competent authority. And those persons holding offices will continue in the same for the present, provided they will consider themselves good citizens, and willing to take the oath of allegiance to the United States.

The undersigned hereby absolves all persons residing within the boundaries of New Mexico from any further allegiance to the republic of Mexico, and hereby claims them as citizens of the United States. Those remaining quiet and peaceable will be considered good citizens, and receive protection; those who are found in arms, or instigating others against the United States, will be considered as traitors, and treated accordingly.

Don Manuel Armijo, the late governor of the department, has fled from it; the undersigned has taken possession of it, without firing a gun or spilling a single drop of blood, is which he most truly rejoices, and for the present will be considered as governor of the Territory.

Given at Santa Fé, the capital of the Territory of New Mexico, this 22d day of August, 1864, and in the 71st year of the independence of the U. States.

S. W. KEARNEY,
Brig. General, U. S. A.

By the Governor:
59 JUAN BAUTISTA VIGIL Y ALARID.

THE UNITED STATES OF AMERICA,
Territory of New Mexico.

I, Alexander M. Jackson, secretary of said Territory, do hereby certify that the within and foregoing three pages contain a full, true, and perfect copy of the original proclamation of Brig. General S. W. Kearney, on file in my office.

In testimony whereof I have hereunto set my hand and seal of office this 20th day of June, A. D. 1859.

[SEAL.]

A. M. JACKSON,
Secretary of the Territory of New Mexico.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original paper on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

On which said paper are the following endorsements, to wit:

Exhibit "A," No. 4. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

60 "A," No. 5.

SECRETARIA DE GOB'RNO DEL DEPARTAMENTO.

El Ex'ma Señor Gobernador me manda prevenir á V. que tan luego como le sea presentada el documento que acredite la mersenacion de terreno dado por la Ex'ma Asamblea Departamental en 10 de Enero proximo pasado á D'n Juan Bautista Vigil y Alarid y á D'n Antonio José Ribera en el terreno conosido por la Jornada del Muerto, y de cuya donacion se escluyo al naturalisado Miguel Salomon Houck, teniendolo por extrangero, y cuyo individuo se presentará la correspondiente carta de naturalesa en este caso, será tenido por agraciado como á los otros dos interesados arriba mencionados, a quienes prosederá V. á poner en posecion de dicha terreno, demandandoles los linderos que señalaron en su peticion por no haber aeteradolos la Ex'ma Asamblea que solo restingio el derecho esclusivo de los pastos que serian comunes, á los transitantes que ban y bienen por el camino, y nunca á los atendados ó pastores de este y de otros departamentos, previniendole ademas de orden de S. E. que al documento de mersenacion agreguese V. una copia legalisada de esta comunicacion para que sirba de resguardo á los interesados, y puedan estos con mayor seguridad emprendar las obras de abrir norias que seran
61 muy utiles al publico librandose de muchas perdidas y asegurando su vida y la de sus animales á muy poca costa.

Todo lo que de orden de S. E. digo a V. para su cumplimiento y ejecucion, abisandose del resivo de la presente. Dios y libertad.

Santa Fé Febrero 4 de 1846.

NICOLAS QUINTANA, [RUBRIC.]
Prosecretario.

S'or ALCALDE y JUEZ DE 1ª INSTANCIA,
de esta capital, Santa Fé.

Of which said paper the following is an official translation, to wit:

OFFICE OF THE SECRETARY OF THE
GOVERNMENT OF THE DEPARTMENT.

His excellency the governor directs me to inform you that so soon as the document is presented to you accrediting the grant of land made by the most excellent departmental assembly, on the 10th of January last past, to Don Juan Bautista Vigil y Alarid and Don Antonio José Ribera, at the point known as the Jornada del Muerto, and from which grant the naturalized citizen Miguel Solomon Houck was excluded being considered as a foreigner, which individual, if he presents the proper naturalization
62 papers, in that case he shall be considered as one of the grantees, equally with the other two persons above mentioned, whom you will proceed to place in possession of said land, marking out to them the boundaries which they set forth in their petition, as they have not been changed by the most excellent assembly, who only restricted the exclusive right to pastures which are declared to be common to travellers going and coming over the road, and not to owners of stock in this and other departments, requiring them, also by direction of his excellency, to attach to the granting deed a certified copy of this communication for the protection of the parties interested and that they may with greater security undertake the work of opening wells, which will be of great utility to the public, thereby preventing many losses and saving their lives at very little expense.

Of all which you are informed by order of his excellency for its due compliance and execution, acknowledging the receipt hereof.

God and liberty. Santa Fé, February 4th, 1846.

(Signed) NICOLAS QUINTANA,
Pro Secretary.

To the JUSTICE OF THE PEACE AND JUDGE OF FIRST INSTANCE *of this Capital—Santa Fé.*

SURVEYOR GENERAL'S OFFICE,
Translator's Department, Santa Fé, New Mexico,
63 *August* 29, 1859.

The above is a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.] A. P. WILBAR,
Surveyor General.

On which said paper is the following endorsement, to wit:

Exhibit "A," No. 5. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

"A," No. 6.

On the twenty-third day of May, one thousand eight hundred and fifty-nine, at Santa Fé, Territory of New Mexico, Juan Bautista Vigil y Alarid of the first part, and Albino Chacon of the second part, made and confirmed the following agreement, to wit, Juan Bautista Vigil y Alarid, the first being one and the principal of the grantees, who by just, legal, and sufficient title, which they show, proves that to the aforesaid
64 Vigil y Alarid, José Miguel S. Houck, and Antonio José Rivera, who for his patron signed the petition, was granted and donated by the Mexican authorities the land in this Territory, known and called the Jornada del Muerto, and the said Juan Bautisto Vigil, knowing the great and useful services which have been and are now being rendered by Albino Chacon, who as judge of first instance at that time carried out the execution of said title from the beginning to the delivery of the copy, and placing the parties in possession of the land aforesaid, as compensation for said services, and in consideration of the said Albino Chacon being of the petitioners for said land, and in conformity also with the privileges conferred upon the grantees in the aforesaid acts of concession of admitting one or more associates at their will, therefore the said Juan Bautista Vigil y Alarid, upon his responsibility binds himself, and did offer to the said Albino Chacon, for himself and in the name of his associates, Messrs. José Miguel S. Houck and Antonio José Rivera in said land, to give him an equal interest, as conferred upon them in said land of the Jornada del Muerto; that is to say, one fourth interest in the land, or its equivalent, which the said Albino Chacon accepted,
65 and binds himself to aid in paying costs, if it becomes necessary to do so, until the final concession is made by the government to which this Territory now belongs.

In testimony whereof the present document was executed, which both

parties agree to submit to one of the authorities of this city to be authorized and certified in form. The parties signing before witnesses as a matter of record, &c.

(Signed) JUAN BAUTISTA VIGIL Y ALARID, AND ASSOCIATES.

(Signed) ALBINO CHACON.

Executed, signed, and sealed in presence of—

(Signed) THOMAS BACA Y ORTIZ.

(Signed) JOSÉ DAVID BACA.

TERRITORY OF NEW MEXICO,
County of Santa Fé:

Before me, Nicolas Quintana, a justice of the peace for the county of Santa Fé, appeared Albino Chacon and Juan Bautista Vigil y Alarid, known to me to be the persons whose names appear to the foregoing document or contract, and they acknowledged that they executed, signed, and sealed the same voluntarily, and for the purposes therein mentioned.

66 In testimony whereof, I hereto attach my official signature, at Santa Fé, this 24th day of May, A. D. 1859.

(Signed) NICOLAS QUINTANA,
Justice of the Peace.

SURVEYOR GENERAL'S OFFICE,
Santa Fé, New Mexico, Translator's Department, August 9th, 1859.

The foregoing is a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

SURVEYOR GENERAL'S OFFICE,
October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.]

A. P. WILBAR.
Surveyor General of New Mexico.

On which said paper is the following endorsement, to wit:

Exhibit "A," No. 6. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

67 "A," No. 7.

Seal third, [SEAL.] four rials.

Years one thousand eight hundred and fifty-six and fifty-seven.

MEXICAN REPUBLIC, *State of Chihuahua, Town of El Paso:*

The declaration of the witness, Don Francisco San Juan, taken before me, citizen Sisto Irigoyen, first justice and judge of first instance of this town of El Paso, in the State of Chihuahua, Mexican republic, to be read in evidence before the Honorable William Pelham, surveyor general of the Territory, concerning a claim made by the heirs of Don Pedro Armendaris under a grant of land at Valverde and Fray Cristobal, in the Territory of New Mexico, a credible and competent witness

has now appeared, and in my presence has been lawfully sworn, and under oath deposed as follows:

First question. Do you know the heirs of Don Pedro Armendaris? He answered that he did know them.

Second question. State their names and the place of their residence.

That their names are Manuel Armendaris, residing at El Paso;
68 Antonio Armendaris, Enrique Armendaris, Miguel Armendaris, and Rodrigo Garcia as the representative and husband of Belen Armendaris, deceased; all of these reside at the capital of Chihuahua.

Third question. State if you know when Don Pedro Armendaris took possession of the grant of the land at Valverde, and how long did he remain in possession there? He said that, in one of his many journeys to New Mexico, towards the end of the year 1819, Don Pedro Armendaris had possession of said land, and, to the best of his recollection, he remained in possession and occupied it up to the year 1825 or 1826.

Fourth question. State what improvements he made on said lands, and what number of cattle, more or less, did he pasture there. He said that he had several buildings, a large quantity of land under cultivation, and that he does not know the exact number of cattle he had, but he well knows that he had a large number of sheep, cattle, and horses.

Fifth question. State when he left said land, and what induced him to leave it. He said that he left the land about the year 1825 or 1826.

He left the land after having lost a large amount of property by
69 the incursions of the hostile Indians, and that was what compelled him to leave. Siston Irigoyen, first justice and judge of first instance aforesaid, hereby certifies that the foregoing declaration was taken by me, and at my office, this 13th day of July, 1857. That the aforesaid witness signed the foregoing declaration in my presence, and was legally sworn to the truth of the same, with me, the present judge, and those in my attendance. I certify.

(Signed) SISTO IRIGOYEN.
(Signed) FRANCISCO GARCIA Y SAN JUAN.

Attending: (Signed) FRANCISCO BARRON.
Attending: (Signed) MAGRINIO CASTAÑADA.

The declaration of the witness, Don Luis Telles, taken before me, citizen Sisto Irigoyen, first justice and judge of first instance of this town of El Paso, in the State of Chihuahua, Mexican republic, to be read in evidence before the Honorable William Pelham, surveyor general of New Mexico, concerning a claim made by the heirs of Don Pedro Armendaris, under a grant of land at Valverde, and Fray Cristobal, in

the Territory of New Mexico, a credible and competent witness,
70 has now appeared, and in my presence has been legally sworn, and deposed under oath as follows:

First question. Do you know the heirs of Don Pedro Armendaris? He said that he does know them.

Second question. State their names and the places of their residence. He said their names are Manuel Armendaris, resident of El Paso; Antonio Armendaris, Henry Armendaris, Miguel Armendaris, and Rodrigo Garcia, as the husband and representative of the children of Belen Armendaris, deceased, residents of the capital of Chihuahua.

Third question. State, if you know, when Pedro Armendaris took possession of the grant of land at Valverde, and how long did he continue in possession?—He stated that, in the year 1819, Don Pedro Armendaris already had possession of said land, and, to the best of his

recollection, he continued in possession and remained there until the year 1825 or 1826.

Fourth question. State what improvements he made on the land, and what number of cattle, more or less, he pastured there. He said that he had several buildings, a large amount of land under cultivation.
71 That he does not know the exact number of cattle he had, but that he well knows and saw that he had a large number of sheep & cattle, and a great many horses.

Fifth question. State when he left that land, and what induced him to abandon it.—He stated that he left the land about the year 1825 or 1826, after having lost a large amount of his property from the incursions of the hostile Indians, on account of which he was compelled to leave, which the deponent well knows, as he was a soldier at that time and one of the detachment; that he fought with the Indians to prevent several robberies, which they frequently committed.

Sixth question. Be pleased to state the boundaries of the grants to Valverde and Fray Cristobal, if you remember them.—He stated that he remembers the boundaries, and about three leagues this side of the Muerto Spring, that is, commencing at the San Pascual Mountain, and following down the river to said point; from thence drawing a direct line to the summit of the little mountain of Las Petacas; from thence another direct line to the summit of the hill or Little Redondo Mountain; and from thence in a direct line to the little mountain or mountain of San Pascual above mentioned; that, in his opinion, these are
72 the boundaries of Valverde and Fray Cristobal.

Sisto Irigoyen, first justice and judge of first instance above mentioned, hereby certifies that the foregoing declaration was taken by me, and at my office, on this 13th day of July, 1857; that the aforementioned witness did not sign the foregoing declaration, as he did not know, but that in his presence he made the sign of the cross, and was legally sworn to the truth of the same, the judge and attending witnesses signing. I certify.

(Signed) SISTO IRIGOYEN.
(Signed) LUIS TELLES. +

Attending: (Signed) FRANCISCO BARRON.
Attending: (Signed) MAGRINIO CASTAÑEDA

Fees for the foregoing proceeding, without the paper, 4 dollar, paid.
[RUBRIC].

No. 10.

CONSULATE OF THE UNITED STATES,
Paso del Norte, Mexico, July 13th, 1857.

I, the undersigned, consulate of the United States of America,
73 residing at Paso del Norte, republic of Mexico, do hereby certify that the foregoing are the true and genuine signatures of Sisto Irigoyen, a justice of the peace of this place, and as such are entitled to full faith and credit.

Given under my hand and the seal of this my consulate, at Paso del Norte, this 13th day of July, 1857, and of the independence of the United States the eighty-first.

(Signed) DAVID R. DIFFENDAFFER,
Consul.

SURVEYOR GENERAL'S OFFICE,
Translator's Department, Santa Fé, New Mexico, July 21st, 1859.

The foregoing, excepting the consular certificate, is a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a true copy of the original on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

74 On which said paper is the following endorsement, to wit:

Exhibit "A," No. 7. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

"A," No. 8.

SANTA FÉ, N. M., *July* 25, 1859.

Hon. W'M PELHAM, *Surveyor General.*

SIR: Your communication of 6th of July, 1859, informing us that our grant, for various reasons, had been decided adversely to us, has been received.

It is our wish to appeal from your decision to that of Congress, and we feel confident in being able to establish that the grant is in form, and valid in all respects, and that the non-compliance with the conditions subsequent annexed to said grant incurs no forfeiture of our rights, for the reason that the action of the constitutional authorities of the country prevented the compliance upon our part with the conditions of the grant, and hence no fault attaches to us.

JUAN BAUTISTA VIGIL & ALARID & CO.,
By HOUGHTON, WATTS & JACKSON, *Attorneys.*

75 SURVEYOR GENERAL'S OFFICE,
October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

On which said paper is the following endorsement to wit:

Exhibit "A," No. 8. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

"A," No. 9.

GOBIERNO SUPERIOR DEL DEPARTAMENTO.

Teniendo por justas, bastantes y legales las causas que V. espone, en nota de 19 del corriente; para renunciar el destino de 1er individuo del ayuntamiento de esta ciudad; el gobierno hasiendo uso de la facultad que le consede el articulo 3° fraccion 12 de la ley reglamentaria de 20 de Marzo de 1837 hé venido en admitirle á V. en renuncia la cual transcribirá

ál s'or prefecto para que ál regidor que le toque turnar en la vara se encargue desde del luego jusgado 2° y este del 1° que V. obtenia por eleccion. Dios y libertad.

Santa Fé, Setiembre 21 de 1846.

JUAN BAUTISTA VIGIL Y ALARID. [RUBRIC.]
JESUS MARIA TAFOYA, *Of'l* 1°. [RUBRIC.]

76 S'or ALCALDE 1° *de Santa Fé.*

En 21 Sept. se transcribio al perf'to.

Of which said paper the following is an official translation, to wit:

SUPERIOR GOVERNMENT OF THE DEPARTMENT.

Considering the reasons given in your note of the 11th instant as just, sufficient, and legal for resigning the office of first individual of the corporation of this city, the government making use of the faculties conferred upon it by article 3d, fraction 12, of the regulatory law of March 20th, 1837, I have accepted your resignation, which you will transmit to the honorable prefect, in order that the alderman whose turn it is to receive the staff may assume the duties of 2d justice, who will assume those of first justice, which you obtained by election. God and liberty.

Santa Fé, September 21st, 1846.

(Signed) JUAN BAUTISTA VIGIL Y ALARID,
(Signed) JESUS MARIA TAFOYA, *First Clerk.*

To the FIRST JUSTICE *of Santa Fé.*

On the 21st September it was transmitted to the prefect.

SURVEYOR GENERAL'S OFFICE,

77 *Translator's Department, Santa Fé, New Mexico, July 10th,* 1859.

The above is a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

SURVEYOR GENERAL'S OFFICE,
October 20th, 1860.

I certify that the foregoing is a correct copy of the original paper on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

On which said paper are the following endorsements, to wit:

Exhibit "A," No. 9. Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

"A," No. 10.

JUAN BAUTISTA VIGIL ET AL. }
vs. }
THE UNITED STATES. }

This case came on to be heard on the 16th July and continued until the 18th July, when it was finally submitted by counsel.

78 On the 28th day of December, 1845, Antonio José Rivera, for his patron, Juan Bautista Vigil y Alarid, and José Miguel Houck,

petitioned the governor of the department of New Mexico for a tract of land known as the Jornada del Muerto, with the boundaries therein set forth, solemnly binding themselves, upon receiving the grant and being placed in possession of the land, to commence the construction of two wells at the most central points on the Jornada for the purpose of supplying water to travellers and stock, and also to establish two factories of utility to the department. These factories were to be supplied with modern improved machinery, and the whole to be concluded within five years. They were also to have two cannons and a sufficient number of fire-arms to repel any attack from hostile Indians.

On the 10th day of January, 1846, Manuel Armijo, the governor of the department, referred the petition to the departamental assembly, recommending that the grant be made if the propositions made by the applicants, in the form of conditions, were deemed to be of sufficient benefit to the country, and calling their attention to the matter of
79 those conditions, which at that time was a novel undertaking in the department. On the same day the departamental assembly granted the land known as the Jornada del Muerto to Antonio José Rivera, and Juan Bautista Vigil y Alarid, for the purpose of opening wells and cultivating as much land as their means would allow, excluding Michael Houck from any participation in the grant, on account of the prohibition contained in article 9th of the law of March 11th, 1842, which forbids foreigners from acquiring lands in the frontier departments without the previous knowledge of the supreme government.

On the 4th day of February, 1846, Nicolas Quintana, acting secretary, by declaration of the governor, orders the justice of the peace of Santa Fé to place the grantees in possession of the land, and also directs an equal interest to be given to Houck, upon the presentation of his naturalization papers.

On the 15th day of March, 1846, José Albino Chacon, first justice of Santa Fé, certifies that he placed Antonio José Rivera and Juan Bautista Vigil in possession of the land granted to them.

On the 16th day of September, 1846, the same José Albino Chacon declares José Miguel Salomon Houck as a party to said
80 grant, he having filed the required naturalization papers.

Immediately after this statement, made after the sovereignty of the country had changed, there appears a memorandum, or note without any written signature, but merely a rubric, to the effect that as Manuel Armendaris, a resident of the department of Chihuahua, claimed a portion of the land embraced within the grant of the Jornada del Muerto, the grantees forbidden to prosecute the work until a certain suit pending between the said Armendaris and the heirs of Francisco Xabier Chaves should be decided, and the period of five years given for the conclusion of the work was to commence from the time of the termination of said suit, by which the northern boundary would be determined.

Immediately thereafter follows the original certificate of naturalization, declaring José Miguel Houck a citizen of the republic of Mexico.

The parties also file the original letter from José Manuel Gallegos, the president of the departamental assembly, returning the petition of the grantees, with the action had thereon. The original order to Alvino Chacon, directing him to place the parties in possession,
81 is also filed, as well as the acceptation of the resignation of Albino Chacon by Juan Bautista Vigil y Alarid, acting governor, on the 21st September, 1846. An agreement is also filed, dated May 3d, 1859, between Juan Bautista Vigil y Alarid and associates, of the first part, and Albino Chacon, of the second part, by which a one-fourth

interest is conveyed to the said Albino Chacon, in consideration of the services rendered by him in placing the parties in possession of the grant. A certified copy of the proclamation of Brig. Gen'l S. W. Kearney to the people of New Mexico, upon taking possession of the country in the name of the United States, on the 18th August, 1846, also accompanies the papers in the case.

The name of José Albino Chacon appears signed to the original petition asking for the grant, but as his name does not appear in the granting decree, and as he was directed to place the parties in possession, which would not have been done were he an interested party, it is believed he attached his name thereto at a very recent date, being after the transactions in the case took place, and it has so been admitted by one of the grantees.

The papers acted upon are the originals filed by the claimants.

82 This is one of the most important cases that have been filed in this office for adjudication, embracing, as it does, an area of nearly two and one-half millions of acres of land, a large portion of which has been subdivided and is now ready to be brought into market, and has received my most careful attention and close examination.

The parties claim a confirmation of their grant, for the following reasons:

First. On account of the originality and genuineness of the documents.

Second. That the grant was made in due accordance with the laws and customs in force at that time.

Third. That the parties were forbidden from taking any further steps towards the construction of the wells and the establishment of the factories until a certain suit between Pedro Armendaris and the heirs of Francisco Xavier Chaves should be decided, and by which the northern boundary of the grant in question would be determined.

Fourth. That the non-compliance of the conditions of the grant under the late government does not forfeit their rights under the government of the United States.

It is not necessary to dwell on the first and second points sub-

83 mitted in the brief of the claimants, as the originality and genuineness of the documents not questioned and is fully proven in evidence.

The petition made by the parties asking for the grant solemnly bind themselves, upon being placed in possession of the land, to commence the construction of wells and the establishment of certain factories. This possession, as will be seen by the certificate of the justice, was given on the 13th day of March, 1846, and no further action is shown to have taken place in the matter until the 21st September, 1846, when Houck is declared to be a party interested in the grant, having presented his naturalization papers, although the departamental assembly positively refuse to grant him an interest in the grant on account of being forbidden by law to hold land in the frontier departments, without the previous knowledge of the general government, and although it is contended that at that time Armijo was invested with extraordinary powers, his action in this case was in direct violation of law, and as no consent of the general government is recorded, or even contended for, the order of the governor to make him an equal participant upon the presentation of the necessary document was null and void, and could not convey to him an interest which the law expressly forbid. After the execution

84 of this document declaring Houck a participant in the grant, made on the 21st day of September, 1846, over one month after the United

States took possession of the country and the laws of the United States extended over it, by the proclamation of the conqueror, General Kearney, upon which so much stress is laid by the claimants, the order requiring the suspension of the construction of the wells, &c., is recorded. By reference to the original document it will be seen that this note or razon immediately follows the declaration in favor of Houck, and as Chacon's resignation was accepted on the 21st day of September, 1846, both must have been made upon the same day. It is true that the laws of Mexico were declared to be in force in the land, except when they conflicted with the Constitution or laws of the United States. In this case there was a conflict, for no other power than the Congress of the United States can alter or suspend the compliance of conditions in regard to the severance of land from the public domain. The order was therefore valueless from want of authority in the officer directing the work to be suspended, and could not relinquish them from the compliance of their obligations.

The testimony of Donaciano Vigil, as well as the letter accepting the resignation of Chacon, show that Juan Bautista Vigil y Alarid was the governor of New Mexico at the time the order is purported to
85 have been issued. And to whom was the order issued? To himself, the principal grantee and his associate Rivera, which, to say the least, was very inappropriate and indelicate.

Admitting for a moment that the governor had the authority to issue such an order and that it was proper, what were the parties doing from March, when they were placed in possession, until September, when the governor issued the order himself to suspend any work upon the land? No evidence has been introduced by the parties that any obstacle was thrown in their way, or that they had undertaken to commence the compliance of the conditions which were to give them a good title to the land. They do not show that they commenced digging wells or had taken any steps to erect suitable buildings on the premises for the establishment of the factories that were to be of so much benefit and utility to the department, nor that they had broken up or planted the land their means allowed them to do. On the contrary, it is shown in evidence that no improvements have been placed upon the land, neither did they attempt any, and the Jornada del Muerto, to which the parties claim a title in fee, is the same, and has been since the grant was made, as it was when Mexico declared her independence, "The dead
86 man's journey."

The fourth point made by the claimants requires but a passing notice. In the adjudication of the private land claims in New Mexico, the government of the United States is expected to act in the same manner as the government of New Mexico would have acted under similar circumstances, to do what the government would do and no more.

The granting decree of the departamental assembly clearly states that the land is given to them for the purpose of opening wells and cultivating the soil as far as their means would permit. This is unmistakeably a conditional grant, requiring the petitioners to comply with certain obligations, which, when finished, would entitle them to the land asked for. The case is parallel to one arising under the donation laws of this Territory; when four years' occupation and cultivation does not take place, the land does not become severed from the public domain. The same process of reasoning applies to the case under consideration. As no wells have been dug, no factories established, no land brought under cultivation, the grant is void.

By reference to the petition filed by the parties they admit their willingness to concede to any written boundary which may be

87 adjudged to the contending parties and relinquish all claim to as much as is in dispute.

If that concession is made now, it is reasonable to suppose that they were willing to make it when the claim was first made, and the order of Governor Vigil, requiring himself and associates to suspend the work, was therefore useless and unnecessary.

This case is deemed to be entirely void of merit, and the land claimed believed to belong rightfully to the public domain of the United States. It is therefore rejected and ordered to be transmitted to Congress for its action in the premises.

There are other very objectionable points in the case, which it is unnecessary to dwell upon.

W'M PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
Santa Fé, New Mexico, August 29th, 1859.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

88 On which said paper is the following endorsement, to wit:

Exhibit "A," No. 10, filed in my office this 25th day of October,
1860 Sam'l Ellison, clerk.

EXHIBIT "D."

DESPACHO DEL AGRIMENSOR GENERAL,
Santa Fé, Nuevo Méjico, á 6 de Julio de 1859.

SEÑORES: Tengo el honor de informar á Vds. que despues de un exámen critico del reclamo de Vds. que abraza la Jornada del Muerto, es la opinion de este despacho que el reclamo es uno de aquellos que deben ser rechazados, por varias razones, entre las cuales es una que la peticion promete cumplir con ciertas condiciones que se citan. No han introducido Vds. pruebas para mostrar que esas condiciones han sido cumplidas, y la supocicion es que no han sido puestas en practica, y siendo la base principal de la merced las condiciones prometidas, no puede ser valida, la merced hasta que se cumpla con las promesas hechas por consiguente el informe de esta oficina al Congreso será adverso á la aprobacion de la merced.

Si desea Vd. apelar de la decision de esta oficina, tendré mucho
89 gusto en remitir su apelacion junto mi memoria, la cual será remitida en Setiembre proximo.

Tengo el honor de suscribirme su muy ob'd'te servidor,

W'M PELHAM,
Agrimensor General.

S'R'S J. B. VIGIL Y OTROS,
Santa Fé, N. M.

On which said paper is the following endorsement, to wit:

Exhibit "D." Filed in my office this 25th day of October, 1860. Sam'l Ellison, clerk.

Of which said paper the following is a true translation, filed therewith, to wit:

SURVEYOR GENERAL'S OFFICE,
Santa Fé, New Mexico, July 6th, 1859.

GENTLEMEN: I have the honor to inform you that, after a critical examination of your claim, which embraces the Jornada del Muerto, it is the opinion of this office that the claim is one of those that
90 should be rejected, for several reasons, among which one is that the petition offers to comply with certain conditions therein set forth. You have not introduced proof to show that those conditions have been complied with, and the supposition is that no attempt has been made to do so; and, as the said conditions are the principal basis of the grant, the grant cannot be valid until the promises made shall be complied with. Therefore, the report from this office to Congress will be adverse to the approval of the grant.

If you desire to take an appeal from the decision of this office, I will forward with pleasure your appeal together with my report, which will be forwarded in September next.

I have the honor to subscribe myself your very ob't servant,
(Signed) W'M PELHAM,
Surveyor General.

Translated from the original in Spanish.

EXHIBIT "H."

Gregorio Ortiz, sub-comisario interino del Nuevo Méjico, certifico que á la fecha no hay papel del sello 2° en la oficina de mi cargo.
Julio 12, 1846.

GREGORIO ORTEZ.

EX'MO SEÑOR: La comision nombrada para abrir dictamen
91 sobre la solicitud de los ciudadanos Juan Bautista Vigil y Alarid, Antonio José Ribera, y el extrangero Miguel Houck, p'a que se les conceda por merced la Jornada del Muerto, asi nombrada; demarcando, los linderos q. expresan en la presentacion de 28 de Diciembre de 1845, proximo pasado, y remitida á V. E. por el gobierno de esta departmento con f'ha de hoy, afin de q. V. E. "se considera util al bien procomunál las proposiciones que como condiciones del pedido y la concesion hacen los postulantes, conceda el terreno q. solicitan."

La comision há exsaminado con la detencion correspondiente las condicions q. inconcideradamente hacen los peticionarios y teniendolas por excesivas costoras y arriesgadas, por hallarse el terreno pedido en lo mas centrico y comun de los aduares de las tribus Apaches nombrados Mescaleros, Mimbreriños, Coyoteros y Jilenos, á quienes siempre se agregan los Carrisaleños, Aguas Nuevas, Tiburseños y Nortenos, &a, p'r cuyas razones la comicion opina q. p'a q. el temor de las incursiones de los Indios hoy de Gr'ra y nunca se buena paz, no arredren a los pretendientes de la Jornada del Muerto, V. E. deséche tacitamente las descabelladas y casi impracticables condiciones q. no puedan ni deben cumplir, pues que, seg'n entiende la comicion, es p'a comprometerlos, un pro-
92 yecto del extrang'o Houck mismo á quien opina la comision se debe excluir de merced segun lo dispuesto por la ley de S. S. de Marzo de 1842, en su articulo 9° que se citará en el proyecto del decreto; quedando solo aptos p'a recibir el titulo de mercenacion de la Jornada del Muerto en su terreno por este nombre conocido; los ciuda-

danos mejicanos Juan Bautista Vigil y Alarid y Antonio José Ribera, con facultam de admitir nuevos socios en la compañia que les merezcan confianza, para hacer uso del terreno conocido por la Jornada del Muerto; el cual opina la comicion se les mercene por V. E. (si esta dictamen merceiere aprobacion), dicho terreno á solo los ciudadanos Juan Bautista Vigil y Alarid y Antonio José Rivera, en los terminos mas cencillos y sin referirse en la merced, á condicion alguna de las propuestas por los pretendientes en la peticion de 28 de Diciembre ultimo; poniendo el decreto de concession como articulo unico, en los terminos q. la comicion como proyecto del decreto, para á la deliveracion y exsamen de V. E. en la session de hoy diciendo—"Santa Fé, Enero 10 de 1846. Se concede por esta asamblea, á los ciudadanos José Antonia Rivera y Juan Bautista Vigil, el terreno pedido en el punto conocido por la Jornada del Muerto para abrir norias y hacer una siembra hasta donde alcanzen sus facultades, quedando sin un derecho exclusivo
à los pastos; y sin q. en esta concession tenga parte alguna el
93 extrangero Miguel Houck por q. segun el articulo 9° de la ley de 11 de Marzo de 1842, le prohibe adquirir terrenos en los departamentos fronterizos, sin prebio consentimiento del Supremo Gobierno de la Nacion." Sala de comiciones de laAsamblea Departamental de Nuevo Méjico, Enero 10 de 1846.

J. MANUEL GALLEGOS.
FELIPE SENA.
TOMAS ORTIZ.

Presentado en la session de esta fecha, que approbado el presente dictamen sin adicion ni enmienda.

Es copia del original. Sante Fé, Julio 12 de 1846.

FELIPE SENA,
Secretario de la Comicion.

On which said paper are the following endorsements, to wit:

Exhibit "H," filed in my office this 25th day of October, 1860. Sam'l Ellison, Clerk.

And, an official translation of which said paper is entered in this record on pages .

And be it further remembered, that on the 1st day of February, A. D. 1861, the following notification was issued by the supreme court of the Territory of New Mexico, which said notification is in the words
94 and figures following, to wit:

The President of the United States to the United States marshal for the Territory of New Mexico, greeting:

You are hereby commanded to notify Theodore D. Wheaton, United States district attorney for the said Territory, that Juan Bautista Vigil y Alarid and others have filed in the supreme court of said Territory their petition against the United States, for the recovery of a certain tract of land, therein described, under the grant of the Jornada del Muerto; said suit being brought in the said supreme court in conformity with an act of Congress, entitled An act to confirm certain land claims in the Territory of New Mexico, approved June 21st, 1861; and to summon the said Theodore D. Wheaton to be and appear, on the fourth Monday of February, being the 25th inst., to answer and defend on the part of the United States; and have you then there this notice.

Witness the Hon. Kirby Benedict, chief justice of the Territory of

New Mexico, and the seal of the said supreme court, this 1st day of February, 1861.

[SEAL.] SAM'L ELLISON,
Clerk Supreme Court.

95 On which said notification are the following endorsements, to wit:

Juan B. Vigil y Alarid et al. vs. The United States. Notice to T. D. Wheaton, U. S. dis. att'y.

TERRITORY OF NEW MEXICO, *County of Taos:*

I hereby certify that I have served the within writ by delivering a copy thereof to the within named Theodore D. Wheaton, U. S. district attorney, at Taos, N. M., this 6th day of February, A. D. 1861.

C. P. CLEVER, *U. S. M.*
By PEDRO VALDEZ, *Deputy.*

And be it further remembered that on the 1st day of March, A. D. 1861, being the 10th day of the regular January, 1861, term of said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID ET AL.
vs.
THE UNITED STATES.

96 And now comes the defendant, by her attorney, T. D. Wheaton, esq., and files her demurrer in this cause, and the same is sat down for hearing on to-morrow.

And be it further remembered that on the 2d day of March, A. D. 1861, being the 11th day of the regular January, 1861, term of the said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, JOSÉ ANTONIO RIVERA, & SOLOMON M. HOUCK,
vs.
THE UNITED STATES.

This cause came on to be heard upon the demurrer filed by the U. S. district attorney, and was argued by counsel; and which said demurrer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, County of Santa Fé.

In the supreme court of said Territory, of January term, A. D. 1861, in chancery.

97 The demurrer of the United States, defendant, to the bill filed by Juan Bautista Vigil and others, complainants:

The defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained, to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur in law thereto, and for cause of demur-

rer shew that the said complainant hath not, by his said bill, made such a case as entitles him in a court of equity to any relief from or against these defendants touching the matters contained in said bill, or any such matters; wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, the defendants do demur to the said bill, and to all the matters and things therein contained, and pray the judgment of this hon'ble court whether they shall be compelled to make any other or further answer to said bill, and they pray to be dismissed hence with their reasonable costs by them in this behalf most wrongfully sustained.

T. WHEATON,
For Defendants.

98 On which said demurrer are the following endorsements, to wit:

Juan B. Vigil vs. United States. Chancery. Demurrer. Filed in open court this 1st day of March, 1861. Sam'l Ellison, clerk.

Whereupon it was ordered and adjudged by the court that the said demurrer be and hereby is overruled.

On motion of said district attorney, leave is granted him to file his answer to the petition herein by the meeting of court on Monday next.

And be it further remembered that on the 4th day of March, A. D. 1861, being the 13th day of the regular January, 1861, term of the said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, JOSÉ ANTONIO Rivera, and Solomon M. Houck,
99 *vs.*
THE UNITED STATES. } Original suit.

On this day the United States district attorney files his answer to the plaintiff's petition herein; which said answer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

In the supreme court of said Territory, of January term, A. D. 1861.

To the Hon. Kirby Benedict, presiding judge of said court:

UNITED STATES,
d'ts,
JUAN BAUTISTA VIGIL ET AL. } Petition.

And now comes the defendant, by her attorney, and for answer to the petition filed herein, states that the matters and things set forth and contained in said petition are not true as therein stated, and alleges that the property and real estate therein described is not the property of said plaintiffs, but of right appertains and belongs to the said United States, and this he is ready to verify, wherefore he prays judgment, &c.

WHEATON,
For the United States.

100 On which said answer are the following endorsements, to wit: Juan B. Vigil et als. vs. United States. Claim for real estate. Answer. Filed in open court this 4th day of March, 1861. Sam'l Ellison, clerk.

And by agreement of parties this cause is continued, with leave to either party to take testimony by depositions in the town of Santa Fé, before the chief justice or clerk of this court, upon giving to the opposite party notice in writing as many as twenty days before the taking of the same.

It is ordered that the clerk issue subpœnas when required by the parties, to be served by the marshal in any part of this Territory.

And be it further remembered that on the 15th day of January, A. D. 1862, being the 9th day of the January, A. D. 1862, term of the said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

101 JUAN BAUTISTA VIGIL Y ALARID, Antonio Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

This cause, on the first day of the present term, upon motion of the plaintiffs' counsel, and by agreement of Theodore D. Wheaton, esq., United States district attorney, having been set for trial for this day, now come the plaintiffs, by their counsel, Messrs. Houghton and Jones, esqrs., and the defendants, by their attorney, T. D. Wheaton, esq., and on motion of said attorney, Samuel Ellison, esq., is hereby appointed by the court to interpret and translate such testimony as shall be given in this cause in the Spanish language, and also special register to reduce to writing all testimony in this trial and in open court; and thereupon the said Ellison was duly sworn in conformity with his appointment, to the faithful, true, and skillful performance of his duties.

The issue having been joined in this cause, and the parties ready for trial, the plaintiffs introduced as witnesses in their behalf Alexander P. Wilbar and John A. Clark, who, upon being duly sworn, each severally gave his testimony, which was reduced to writing by the regis-
102 ter in presence of the court, and signed by the witnesses.

And be it further remembered that on the 16th day of January, A. D. 1862, being the 10th day of the January, A. D. 1862, term of the said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

And now on this day came again the parties, by their counsel, and in the further trial of the issue joined herein, plaintiffs introduced Agustin Duran as a witness in their behalf; and said Duran being duly sworn proceeded to testify, and his testimony is reduced to writing, and there not being time to conclude the taking of the testimony of said witness on this day, it is ordered that court adjourn until to-morrow morning at 10 o'clock.

103 And be it further remembered, that on the 17th day of January, A. D. 1862, being the 11th day of the January, A. D. 1862, term of said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

This day came again the parties, by their counsel, and the clerk moved the court to rule the plaintiffs to give security for their costs herein, which said motion is in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

Samuel Ellison, clerk of this court, moves the court to rule the plaintiffs to give security for the costs in this cause.

SAM'L ELLISON, *for motion.*

104 HOUGHTON & JONES, *per contra.*

On which said motion is the following endorsement, to wit:

Juan B. Vigil y Alarid, Antonio Rivera, & J. M. Houck, *vs.* The United States. Motion for rule for costs. Filed in open court this 17th day of January, 1862. Sam'l Ellison, clerk.

Which said motion, upon being argued by counsel, as well by the plaintiffs as for the defendants, was denied and overruled by the court.

Whereupon the court proceeded to hear the further testimony in the further trial of this cause; and the testimony of Agustin Duran being now concluded, so far as the plaintiffs proposed at present to examine him, and the same being reduced to writing in the presence of the court, was signed by him.

And thereupon Donaciano Vigil was introduced by the plaintiffs, and duly sworn as a witness in their behalf, and proceeded to testify,
105 and there not being time to conclude his testimony on this day, it is ordered that court adjourn until 10 o'clock on to-morrow morning.

And be it further remembered, that on the 20th day of January, A. D. 1862, being the 13th day of the January, A. D. 1862, term of said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

And now on this day come again the parties, by their counsel, and continue in the examination of the witness, Donaciano Vigil, and there not being time to conclude his testimony on this day, it is ordered that court adjourn until to-morrow morning at 10 o'clock.

And be it further remembered, that on the 21st day of January, A. D. 1862, being the 14th day of the January, A. D. 1862, term of
106 said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

And now on this day come again the parties, by their counsel, and in the further trial of this cause, proceeded with the testimony of the witness, Donaciano Vigil, and not concluding the same, and Theodore D. Wheaton, esq'r, U. S. district attorney, falling too sick to further attend to the defence this day, it is ordered that court adjourn until to-morrow morning at 10 o'clock a. m.

Supreme court, 15th day, Wednesday, January 22d, 1862.

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

107 The United States district attorney being unable, from sickness, to appear in the defence of this cause on this day, it is ordered that court adjourn until to-morrow at 2 o'clock p. m.

Supreme court, 16th day, Thursday, January 23d, 1862.

JUAN B. VIGIL Y ALARID, ANTONIO JOSÉ RIVera, & José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

The United States district attorney being unable, from sickness, to appear in the defense of this cause on this day, it is ordered that court adjourn until to-morrow morning at 10 o'clock.

And be it further remembered, that on the 24th day of January, A D. 1862, being the 17th day of the January, A. D. 1862, term of said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, AN-
108 tonio José Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

And now on this day came the plaintiffs, by their attorneys, Messrs. Jones and Houghton, and the defendants, by their district attorney, Theodore D. Wheaton, and owing to the sickness of the said district attorney, this cause is, by consent of the parties, continued to the next regular term of the supreme court. And it is ordered that the testimony taken before this court during the present term in this cause, from page one to twenty-five, inclusive, shall be received and read on the trial of

the cause, and be kept on file among the papers herein for that purpose. And which said testimony is in the words and figures following, to wit:

Testimony taken by order of the court in the case of Juan Bautista Vigil y Alarid, Antonio Rivera, and José Miguel Houck, against the United States, taken in open court, to be read upon the trial of said cause, this 15th day of January, A. D. 1862.

ALEXANDER P. WILBAR, of lawful age, being sworn, says:

109 Question 1. In what capacity did you act on the 20th October, 1860, under the government of the United States, in the Territory of New Mexico?

Answer. I was surveyor general of the Territory of New Mexico.

Question 2. State if you recognize the papers now shown to you, numbered from one to ten; and, if so state what they are.

Answer. They are true copies of original papers and proceedings on file in the surveyor general's office, and they are signed and certified by me, as surveyor general of New Mexico; the originals were delivered over by me to my successor in office. The translations are certified to by the translator of the office.

Question 3. Did you know William Pelham, and in what capacity he was acting on the 6th of July, 1859?

Answer. I knew him in the capacity of surveyor general of New Mexico at that time, by the archives in the office.

Question 4. Do you know his handwriting? If so, state whether the signature to this document is genuine.

Answer. I believe it to be Mr. Pelham's handwriting; the document is in the handwriting of Mr. Whiting, who is skillful in imitating handwritings, and I cannot be certain.

A. P. WILBAR.

110 JOHN A. CLARK being duly sworn, says:

Question 1. Are the papers brought here by you under the subpœna duces tecum, original papers and proceedings found in your office in the land claim of Juan Bautista Vigil y Alarid and others, No. 26?

Answer. In answer to the subpœna duces tecum, I have brought into court what seem to me to be four original documents, with a large number of papers, purporting to be translations, and various other papers found in the office of the surveyor general of New Mexico by me, and included in a wrapper with this endorsement: "Claim No. 58. Juan B. Vigil et al. Counties of Socorro and Doña Ana. Filed May 23d, 1859. Docket book, p. 61. Rejected by sur. general August 29, 1859." I am surveyor general of New Mexico, and in possession of the office.

JOHN A. CLARK.

AGUSTIN DURAN being duly sworn, says:

Question 1st. What is your age?

Answer. Sixty-nine years of age.

Question 2. Where have you lived during your life-time?

111 Answer. I was born in this place, and have lived here ever since, except four years; I resided in Chihuahua during my youth.

Question 3. What position did you hold under the departmental government of New Mexico, when it was in existence?

Answer. Custom-house receiver.

Question 4. Did you know Manuel Armijo; and if so, what position did he occupy?

And be it further remembered, that on the 21st day of January, A. D. 1862, being the 14th day of the January, A. D. 1862, term of
106 said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

And now on this day come again the parties, by their counsel, and in the further trial of this cause, proceeded with the testimony of the witness, Donaciano Vigil, and not concluding the same, and Theodore D. Wheaton, esq'r, U. S. district attorney, falling too sick to further attend to the defence this day, it is ordered that court adjourn until to-morrow morning at 10 o'clock a. m.

Supreme court, 15th day, Wednesday, January 22d, 1862.

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Supreme court, 16th day, Thursday, January 23d, 1862.

JUAN B. VIGIL Y ALARID, ANTONIO JOSÉ Rivera, & José Miguel Houck, *vs.* THE UNITED STATES. } Original suit.

The United States district attorney being unable, from sickness, to appear in the defense of this cause on this day, it is ordered that court adjourn until to-morrow morning at 10 o'clock.

And be it further remembered, that on the 24th day of January, A D. 1862, being the 17th day of the January, A. D. 1862, term of said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

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And now on this day came the plaintiffs, by their attorneys, Messrs. Jones and Houghton, and the defendants, by their district attorney, Theodore D. Wheaton, and owing to the sickness of the said district attorney, this cause is, by consent of the parties, continued to the next regular term of the supreme court. And it is ordered that the testimony taken before this court during the present term in this cause, from page one to twenty-five, inclusive, shall be received and read on the trial of

the cause, and be kept on file among the papers herein for that purpose. And which said testimony is in the words and figures following, to wit:

Testimony taken by order of the court in the case of Juan Bautista Vigil y Alarid, Antonio Rivera, and José Miguel Houck, against the United States, taken in open court, to be read upon the trial of said cause, this 15th day of January, A. D. 1862.

ALEXANDER P. WILBAR, of lawful age, being sworn, says:

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Answer. I was surveyor general of the Territory of New Mexico.

Question 2. State if you recognize the papers now shown to you, numbered from one to ten; and, if so state what they are.

Answer. They are true copies of original papers and proceedings on file in the surveyor general's office, and they are signed and certified by me, as surveyor general of New Mexico; the originals were delivered over by me to my successor in office. The translations are certified to by the translator of the office.

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Answer. I knew him in the capacity of surveyor general of New Mexico at that time, by the archives in the office.

Question 4. Do you know his handwriting? If so, state whether the signature to this document is genuine.

Answer. I believe it to be Mr. Pelham's handwriting; the document is in the handwriting of Mr. Whiting, who is skillful in imitating handwritings, and I cannot be certain.

A. P. WILBAR.

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Answer. In answer to the subpœna duces tecum, I have brought into court what seem to me to be four original documents, with a large number of papers, purporting to be translations, and various other papers found in the office of the surveyor general of New Mexico by me, and included in a wrapper with this endorsement: "Claim No. 58. Juan B. Vigil et al. Counties of Socorro and Doña Ana. Filed May 23d, 1859. Docket book, p. 61. Rejected by sur. general August 29, 1859." I am surveyor general of New Mexico, and in possession of the office.

JOHN A. CLARK.

AGUSTIN DURAN being duly sworn, says:

Question 1st. What is your age?

Answer. Sixty-nine years of age.

Question 2. Where have you lived during your life-time?

111 Answer. I was born in this place, and have lived here ever since, except four years; I resided in Chihuahua during my youth.

Question 3. What position did you hold under the departmental government of New Mexico, when it was in existence?

Answer. Custom-house receiver.

Question 4. Did you know Manuel Armijo; and if so, what position did he occupy?

Answer. I knew him; he was first gefe political, political chief; afterwards governor and military commander.

Question 5. During what time was he governor of the department of New Mexico?

Answer. From thirty-seven to forty-six.

Question 6. At what time in 1846 did he cease to be governor?

Answer. I think in the month of August, 1846—he ceased to be governor on the entrance of the American troops; he then ceased to be governor and left for Chihuahua.

Question 7. Have you ever seen Governor Armijo write his name?

Answer. I have many times; he had much business in the custom-house.

Question 8. Do you know his signature when you see it?

Answer. Yes, and the character of the letters also.

112 Question 9. You will please examine the signature on the reverse page of folio three on the document now shown to you purporting to be the original document in the grant to the lands now in question, and state if you know whose signature it is.

Answer. It is the signature of Don Manuel Armijo, who was at that time governor and military commander, and president of the departmental legislature.

Question 10. Did you know Miguel E. Pino?

Answer. I did, and I know him yet.

Question 11. What position did he occupy on the 10th day of January, 1846?

Answer. I think he was secretary to the governor, and he wrote also in the departmental legislature, at times.

Question 12. Did you ever see him write his name?

Answer. I have.

Question 13. Do you know it when you see it?

Answer. I do.

Question 14. Will you please examine the signature immediately below that of Manuel Armijo, on the same page of document marked Exhibit "A," No. 2, and if you know it, state whose signature it is?

113 Answer. It is the signature of Don Miguel E. Pino, first officer of the secretary's department.

Question 15. Did you know José Chavez on the 10th day of January, 1846?

Answer. I did.

Question 16. What position did he occupy at that time?

Answer. A member of the departmental assembly.

Question 17. What position did he occupy at the time referred to, in the departmental assembly?

Answer. He was president of the departmental assembly, by virtue of his being the senior member, and in the absence of the governor, when he did not choose to attend.

Question 18. Did you ever see him write his name?

Answer. I have, and have corresponded with him officially and privately, and have letters of his now in my possession.

Question 19. Do you know his signature?

Answer. I do, very well.

Question 20. Will you please examine the first signature on the reverse page of folio four of the same document heretofore shown to you, and state whose signature it is?

Answer. It is the signature of Don José Chavez.

Question 21. Do you know Nicolas Quintana y Rosas?

Answer. I know him very well; he was a school teacher here at many different times.

114 Question 22. What position did he occupy on the 10th day of January, 1846?

Answer. He was clerk in the departmental assembly.

Question 23. Did you ever see him write his name, and would you know his signature should you see it?

Answer. I have seen him write his name and would know his signature should I see it.

Question 24. Will you please examine the second signature on the same page of the same document immediately below that of José Chavez, and state whose it is?

Answer. It is the signature of Don Nicolas Quintana y Rosas; it is the same he was in the habit of using and the character of the letters is the same.

Question 25. Did you know José Alvino Chacon?

Answer. I did.

Question 26. What position did he occupy in this Territory on the 6th day of February, 1846?

Answer. He was first alcalde of the city of Santa Fé; and acting as judge of the first instance, he had the power to put persons into possession of lands, and to take cognizance of cases wherein the jurisdiction of alcaldes did not reach.

Question 27. Did you ever see José Alvino Chacon write his name?

Answer. I have.

115 Question 28. Would you know his signature if shown to you?

Answer. I would.

Question 29. Please examine folios five, six, and seven of the same document marked "A," No. 2, referred to, and state in whose handwriting are the several documents therein contained, and whose signature and rubric appears to the same.

Answer. It is written and signed by José Albino Chacon; five pages are written by him.

Question 30. Do you know the rubric of José Alvino Chacon?

Answer. I do, and have known it for a long time.

Question 31. Please examine the rubric at the foot of the reverse page of folio seven on the same document referred to, and state in whose handwriting the writing was made, and whose rubric is attached thereto?

Answer. The rubric is José Albino Chacon's, but I do not know by whom the document is written.

Question 32. Did you know Santiago Abrew?

Answer. I knew him for many years.

Question 33. What position did he hold in New Mexico on the 18th day of August, 1832?

Answer. I think he was political chief.

Question 34. Did you ever see him write his name?

Answer. I have, many times.

Question 35. Would you know his signature if you should see it?

116 Answer. I would know his signature and writing.

Question 36. Examine the first signature at the foot of the writing on folio eight, in the document marked "A," No. 2, referred to, and state whose signature it is?

Answer. It is the signature of Santiago Abrew, political chief at that time.

Question 37. Did you know Teodosio Quintana?

Answer. Very well. I had him in my office for some time as clerk.

Question 38. In what capacity was he acting on the 18th day of August, 1832?

Answer. He was secretary to the political chief, Santiago Abrew.

Question 39. Did you ever see him write his name?

Answer. I have.

Question 40. Would you know it if you should see it?

Answer. I would, and his handwriting also.

Question 41. Please examine the last signature to the foot of the writing on the same folio eight above referred to, and state whose signature it is?

Answer. It is the signature of Teodosio Quintana, as also the writing above is in his hand.

Question 42. Do you know José Manuel Gallegos?

Answer. I do.

Question 43. In what capacity was he acting in the government of New Mexico, January 12th, 1846?

117 Answer. A member of the departmental assembly of New Mexico.

Question 44. Did he act in any other capacity in the departmental assembly than as a member?

(Objected to by the dis. attorney.)

Answer. He acted as president when there was no member his senior present.

Question 45. Did you ever see José Manuel Gallegos sign his name?

Answer. I have.

Question 46. Would you know his signature if you should see it?

Answer. I would.

Question 47. Please examine the second page of document marked No. 9, and state to the court whose is the first signature signed thereto?

Answer. The signature of José Manuel Gallegos is signed thereto, and it is his signature.

Question 48. Please state to the court whose signature is the second one signed to the same document if you know, and whether or not said signature is genuine.

Answer. The signature is that of Nicolas Quintana y Rosas, and is genuine; he was clerk of the departmental assembly at that time.

Question 49. Did you know Nicolas Quintana?

Answer. I did.

Question 50. In what capacity was he acting on the 3d day of February, 1846?

118 Answer. I do not recollect, but I believe that he was alcalde.

Question 51. Did you ever see him write his name?

Answer. I have. I knew his signature and handwriting very well.

Question 52. Please examine second page of document marked No. 10, and state to the court whose signature is signed thereto, if you know.

Answer. It is the signature of Nicolas Quintana; the one he always uses.

Here the examination-in-chief closed.

Cross-examined by U. S. dis. attorney:

Question 1. At what time was the chiefs of the Utes killed in the palace in Santa Fé?

Answer. About the years 1834 or 1835, at the time Martinez was governor, but I am not certain as to the exact date.

Question 1. For how long a time was Martinez governor, after the massacre of the Utes?

Answer. I do not recollect.

Question 3. How long was he governor previous to that time?

Answer. Three years, more or less.

Question 4. What powers did the political chief possess?

119 Answer. About the same as those exercised by the probate judges, or something greater, with but little difference.

Question 5. When was Armijo appointed governor of the Territory?

Answer. He was elected governor by the people in the year 1837, and afterwards he was appointed by the government.

Question 6. When was he appointed by the government?

Answer. I believe he was appointed in 1838; at least, in the year 1839 he was governor and military commander.

Question 7. Did the governor of New Mexico keep a record of his proceedings as such governor?

Answer. I do not know, but the then secretary ought to know. I suppose, however, he did, for the reason that he was very attentive to such matters.

Question 8. Did the departmental assembly keep a record of its proceedings as such?

Answer. It did; that I know because I was a member of that body in the year 1835.

Question 9. When was Guadalupe Miranda appointed secretary to Governor Armijo, and how long did he continue in office?

Answer. I do not know.

Question 10. Did Guadalupe Miranda act as secretary to Governor Armijo?

120 He did; but I do not know at what time.

Question 11. You state in your direct examination that Miguel E. Pino sometimes acted as secretary to the governor; when he did not act what other person acted in that capacity?

Answer. I said that Miguel E. Pino was first officer to Armijo, and not secretary; that there was three or four assistant clerks at times.

Question 12. Did you state on your direct examination that Miguel E. Pino sometimes acted as clerk to the departmental assembly?

Answer. I did; he done so by request of the secretary.

Question 13. Were you generally occupied in your office as collector of customs at the time referred to in your direct examination?

Answer. I was.

Question 14. Do you know when Mr. Pino acted as clerk to the governor, or when others acted for him?

Answer. I cannot recollect, there was so many removals in the office, unless by an examination of the books of that time—they came to me for pay; I paid them and took their receipts for the same.

Question 15. Where did the departmental assembly hold its sessions?

Answer. In the house now occupied as a barber shop, or near

121 there; as the doors have been so much changed, I cannot state positively.

Question 16. On which side of the public square was the house referred to?

Answer. On the east side of the square, with the door to the west.

Question 17. Where was the custom-house?

Answer. In the room now occupied as the United States clerk's office; from the time it was established until it was suspended in 1846.

Question 18. On what side of the public plaza is the room situated?

Answer. On the northern side, with the door to the south.

Question 19. How often did the departmental assembly hold its sessions, and how long did they generally continue?

Answer. Sometimes more and sometimes less. There was no necessity for their meeting when there was no business; but there was always three persons as a permanent commission to call the others when necessary.

Question 20. You stated yesterday that the governor was properly the presiding officer of that body. Now, in the absence of the governor, did the oldest member present take his seat as presiding officer, or was there a regularly constituted presiding officer?

122 Answer. The governor was the duly constituted presiding officer of that body, and if from sickness or engagements of the governor he did not attend, the senior member present of the assembly presided over the body.

Question 21. Was there not at nearly every meeting of the assembly a different presiding officer, owing to the fact that senior members came in from different parts of the Territory?

Answer. It did not matter where the senior member came from, he presided over the sessions of the assembly, and there was a different presiding officer at nearly every session.

Question 22. Who was president of that assembly on the 20th day of January, 1846?

Answer. I do not recollect. I did not keep a journal to which I can refer at this time to enable me to state positively.

Question 23. What do you understand by rubric?

Answer. I understand it to be a half signature and confirming what was previously done.

Question 24. What to you understand by the word firma?

Answer. The character of the letters in the signature and the rubric heretofore used.

Here the cross-examination closed.

Re-examination by plaintiffs:

123 Question 1. Did the rubric come before or after the written name?

Answer. The rubric was always put after the name, except in cases of but little importance, then the rubric was sometimes used only.

Question 2. Will you please sign your name and rubric, as you have been in the habit of signing it, officially and otherwise.

AGUSTIN DURAN. [RUBRIC.]

Question 3. Will you please explain to the court what you mean by the first officer of the governor?

Answer. The first officer is the chief clerk of the governor, and not secretary.

Question 4. Was the name alone without the rubric considered complete by the Mexicans?

Answer. No. The rubric was always placed thereto.

Question 5. State whether it was the custom and usage of the officers of the departmental government of New Mexico to make their rubric to certain official documents?

Answer. It was. It was done to confirm what had been previously done, and it was done by authorities and officials.

AGUSTIN DURAN. [RUBRIC.]

124 DONACIANO VIGIL, being duly sworn, says:

Question 1. What is your age?

Answer. I am sixty years of age.

Question 2. Where were you born and where have you resided?

Answer. I was born in Santa Fé, and have resided the greater part of life in Santa Fé; the seven years last past I have lived in Pecos.

Question 3. What official position did you occupy in the departmental government of New Mexico, previous to the entrance of the Americans?

Answer. From 1824 to 1846 I was employed in the several military offices of the government. In the first place as clerk of the companies, until 1836. From 1836 on, I was alternately employed in the offices of the commanding officer, and in the secretary's office as clerk, until the year 1846.

Question 4. After that period what position did you hold under the authority of the American government?

Answer. On the 22d day of September, 1846, I was appointed by Gen'l Kearney secretary of the Territory, up to the year 1847, when by the operation of law, by the death of Governor Bent, I became acting governor, and remained as acting governor until the 11th of Oc-

125 tober of the same year, I was relieved by Col. Washington. I then remained in charge of the secretary's office until the 20th of March, 1851, when I was relieved by Hugh N. Smith, who had been appointed secretary.

Question 5. Who was governor of the department of New Mexico the 10th day of January, 1846?

Answer. I do not know; I was in Chihuahua.

Question 6. When did you return from Chihuahua?

Answer. On the 3d of April, 1846.

Question 7. Who was governor of the department of New Mexico when you returned?

Answer. General Armijo.

Question 8. Who had been governor the preceding year?

Answer. General Martinez was governor until the 25th or 26th of May; afterwards the senior member of the departamental assembly, Don José Chavez, until October 15th, at which time I left for Chihuahua; afterwards I do not know who was, until the 3d day of April, when I returned.

Question 9. Who succeeded José Chavez as governor?

Answer. I was not here at the time. When I returned from Chihuahua Armijo was governor.

Question 10. Did you ever see Governor Armijo write his name?

Answer. I have.

126 Question 11. Would you know his signature if you should see it?

Answer. If I should see it I would know it, as also his writing.

Question 12. Examine the first signature on the reverse page of folio three, on the left margin thereof, of document marked "A," No. 2, and state whose signature it is?

Answer. I have seen the signature on the reverse of folio three, and without mistake I say it is the signature of General Armijo, and it is his style of writing, and his signo, which is the same as seal at this time.

Question 13. What was the signo called in New Mexico, and in the Spanish language?

Answer. Signo is the same as firma; the name represents the act, and the firma the confirmation of the act.

Question 14. State whether any difference exists between what is called the rubrica and the firma, and if so, what is it?

Question 19. How often did the departmental assembly hold its sessions, and how long did they generally continue?

Answer. Sometimes more and sometimes less. There was no necessity for their meeting when there was no business; but there was always three persons as a permanent commission to call the others when necessary.

Question 20. You stated yesterday that the governor was properly the presiding officer of that body. Now, in the absence of the governor, did the oldest member present take his seat as presiding officer, or was there a regularly constituted presiding officer?

122 Answer. The governor was the duly constituted presiding officer of that body, and if from sickness or engagements of the governor he did not attend, the senior member present of the assembly presided over the body.

Question 21. Was there not at nearly every meeting of the assembly a different presiding officer, owing to the fact that senior members came in from different parts of the Territory?

Answer. It did not matter where the senior member came from, he presided over the sessions of the assembly, and there was a different presiding officer at nearly every session.

Question 22. Who was president of that assembly on the 20th day of January, 1846?

Answer. I do not recollect. I did not keep a journal to which I can refer at this time to enable me to state positively.

Question 23. What do you understand by rubric?

Answer. I understand it to be a half signature and confirming what was previously done.

Question 24. What to you understand by the word firma?

Answer. The character of the letters in the signature and the rubric heretofore used.

Here the cross-examination closed.

Re-examination by plaintiffs:

123 Question 1. Did the rubric come before or after the written name?

Answer. The rubric was always put after the name, except in cases of but little importance, then the rubric was sometimes used only.

Question 2. Will you please sign your name and rubric, as you have been in the habit of signing it, officially and otherwise.

AGUSTIN DURAN. [RUBRIC.]

Question 3. Will you please explain to the court what you mean by the first officer of the governor?

Answer. The first officer is the chief clerk of the governor, and not secretary.

Question 4. Was the name alone without the rubric considered complete by the Mexicans?

Answer. No. The rubric was always placed thereto.

Question 5. State whether it was the custom and usage of the officers of the departmental government of New Mexico to make their rubric to certain official documents?

Answer. It was. It was done to confirm what had been previously done, and it was done by authorities and officials.

AGUSTIN DURAN. [RUBRIC.]

124 DONACIANO VIGIL, being duly sworn, says:

Question 1. What is your age?

Answer. I am sixty years of age.

Question 2. Where were you born and where have you resided?

Answer. I was born in Santa Fé, and have resided the greater part of life in Santa Fé; the seven years last past I have lived in Pecos.

Question 3. What official position did you occupy in the departmental government of New Mexico, previous to the entrance of the Americans?

Answer. From 1824 to 1846 I was employed in the several military offices of the government. In the first place as clerk of the companies, until 1836. From 1836 on, I was alternately employed in the offices of the commanding officer, and in the secretary's office as clerk, until the year 1846.

Question 4. After that period what position did you hold under the authority of the American government?

Answer. On the 22d day of September, 1846, I was appointed by Gen'l Kearney secretary of the Territory, up to the year 1847, when by the operation of law, by the death of Governor Bent, I became acting governor, and remained as acting governor until the 11th of Oc-

125 tober of the same year, I was relieved by Col. Washington. I then remained in charge of the secretary's office until the 20th of March, 1851, when I was relieved by Hugh N. Smith, who had been appointed secretary.

Question 5. Who was governor of the department of New Mexico the 10th day of January, 1846?

Answer. I do not know; I was in Chihuahua.

Question 6. When did you return from Chihuahua?

Answer. On the 3d of April, 1846.

Question 7. Who was governor of the department of New Mexico when you returned?

Answer. General Armijo.

Question 8. Who had been governor the preceding year?

Answer. General Martinez was governor until the 25th or 26th of May; afterwards the senior member of the departamental assembly, Don José Chavez, until October 15th, at which time I left for Chihuahua; afterwards I do not know who was, until the 3d day of April, when I returned.

Question 9. Who succeeded José Chavez as governor?

Answer. I was not here at the time. When I returned from Chihuahua Armijo was governor.

Question 10. Did you ever see Governor Armijo write his name?

Answer. I have.

126 Question 11. Would you know his signature if you should see it?

Answer. If I should see it I would know it, as also his writing.

Question 12. Examine the first signature on the reverse page of folio three, on the left margin thereof, of document marked "A," No. 2, and state whose signature it is?

Answer. I have seen the signature on the reverse of folio three, and without mistake I say it is the signature of General Armijo, and it is his style of writing, and his signo, which is the same as seal at this time.

Question 13. What was the signo called in New Mexico, and in the Spanish language?

Answer. Signo is the same as firma; the name represents the act, and the firma the confirmation of the act.

Question 14. State whether any difference exists between what is called the rubrica and the firma, and if so, what is it?

Answer. The firma, or letters that signify or express the name, signifies the act, and the rubrica or scroll made after the confirmation, instead of the seal at this time used. Signo and rubrica is the same.

Question 15. Are you acquainted with the usages and customs of the departamental government of New Mexico, prior to the 18th August, 1846; and if so, state your means of knowledge?

127 Answer. I am acquainted with them, and this knowledge I have acquired by continual employment in the first offices of the country from 1823 until 1846.

Question 16. State whether Governor Armijo is alive or dead.

Answer. He is dead.

Question. Do you know Miguel E. Pino? and if so, state where he now is, and what occupation he is engaged in.

Answer. I am acquainted with him, but do not know where he is or what his employment is, of my own knowledge.

Question 18. Did you ever see him write his name?

Answer. I have.

Question 19. Would you know his handwriting if you should see it?

Answer. I would.

Question 20. Examine the left hand margin of the reverse page of folio three, of the same document referred to, and state whose signature is that that appears immediately below that of Governor Armijo's.

Answer. I have examined the signature and handwriting, which I am asked to do, and to the best of my knowledge it is the hand-

128 writing and signature of Miguel E. Pino.

Question 21. Did you know José Chavez?

Answer. I did.

Question 22. What position did he hold under the departamental government of New Mexico in 1846?

Answer. In October, 1845, when I left for Chihuahua, he was the senior member of the departamental assembly, and discharged the duties of governor pro tempore.

Question 23. Is he living or dead?

Answer. He is dead.

Question 24. Did you ever see him write his name?

Answer. I have.

Question 25. Would you know his signature if you should see it?

Answer. I would.

Question 26. Examine the signature at the foot of the writing on the reverse page of folio four, of the same document shown to you, and state if you know whose signature it is.

Answer. To the best of my knowledge, the handwriting and signature that appears thereto is that of the deceased, José Chavez.

Question 27. Did you know Nicolas Quintana y Rosas?

Answer. I did.

129 Question 28. What position did he occupy in the departamental assembly of New Mexico in 1846, or prior thereto?

Answer. In October, 1845, he held the office of secretary to the departamental assembly.

Question 29. Is he living or dead?

Answer. He is dead.

Question 30. Did you ever see him write his name?

Answer. I have.

Question 31. Would you know his signature if you should see it?

Answer. I would.

Question 32. Examine the same page of the folio of the document re-

ferred to, as contains the signature of José Chavez, and state whose signature is that immediately to the right and below that of José Chavez.

Answer. I have seen the handwriting and signature referred to, and to the best of my knowledge it is that of Nicolas Quintana y Rosas.

Question 33. Did you know José Albino Chacon?

Answer. I did.

Question 34. What position did he occupy in the departamental government of New Mexico in 1846, and before and after that time?

Answer. He held the office of first alcalde of the corporation, (ayuntamiento,) with the power of judge of the first instance under
130 the provisions of law.

Question 35. How long did he hold office under the proclamation of General Kearney, after possession of New Mexico was taken by the United States?

Answer. I do not recollect the exact time, but on the 22d of September the appointment of officers was made under the provisional government of General Kearney's.

Question 36. Did he hold the same office up to that time?

Answer. He did.

Question 37. State the powers and duties of first alcaldes and judge of the first instance according to the customs and usages of the departamental government of New Mexico, as it regarded giving juridical possession of concessions and grants of land.

(Objected to.)

Question 38. What was the custom and usage of the departamental government of New Mexico in giving judicial possession of concessions and grants of lands?

(Objected to.)

Question 39. Did you ever see José Albino Chacon write his name?

Answer. I have.

Question 40. Would you know it if you should see it?
131 Answer. I would.

Question 41. Examine folios from five to seven, the reverse pages inclusive, of the same document referred to, and state if you know whose signature and rubrica is signed immediately below each writing on the several.

Answer. The name and firma attached to the five writings appear to be those of Chacon himself.

Question 42. According to the customs and usages of the departamental government of New Mexico, what was the legal effect of a document signed with the rubrica alone, such as appears on the reverse of the seventh folio of the document referred to?

Question 43. State if it was the custom and usage of the judges of the first instance and alcaldes under the Mexican government to sign the rubrica alone to official documents, and if so to what class of documents?

Answer. It was not the custom, but the practice, in all judicial proceedings. To all documents incidental to the case the judge placed his rubrica alone, and to the entire cause he signed his name and rubrica.

Question 44. State whether that was the practice in all the courts in the department?

132 Question 45. Did you know Santiago Abrew?

Answer. I did.

Question 46. What position did he occupy in the territorial government of New Mexico in 1832?

Answer. He was political chief.

Question 47. Is he alive or dead?

Answer. He is dead.

Question 48. Did you ever see him write his name?

Answer. I have.

Question 49. Would you know his signature if you should see it?

Answer. I would.

Question 50. Examine signature at foot of writing of folio 8 of the document referred to, and state whose signature it is.

Answer It is that of Santiago Abrew.

Question 51. Did you know Teodosio Quintana?

Answer. I did.

Question 52. What position did he occupy in the territorial government in the year referred to?

Answer. I do not recollect, but he was an officer of the secretary's office of the government.

Question 53. Is he alive or dead?

Answer. He is dead.

Question 54. Did you ever see him write his name?

133 Answer. I have.

Question 55. Would you know his signature if you should see it?

Answer. I would.

Question 56. Examine folio 8, and state whose signature is that immediately below that of Santiago Abrew?

Answer. It is that of Teodosio Quintana.

Question 57. You say that you have seen Nicolas Quintana y Rosas write, and would know his signature if shown to you. Please examine the last signature on the second page of document marked No. 9, and state whose signature it is.

Answer. It is that of Nicolas Quintana y Rosas.

Question 58. Do you know Nicolas Quintana's writing, have you seen him write, and would you know his signature if you should see it.

Answer. Yes.

Question 59. Examine the signature to the writing on 2d page of document marked No. 10, and state whose signature it is.

Answer. It is the signature of Nicolas Quintana y Alarid. Alarid is not there, but I state it so in distinction to Quintana y Rosas.

Question 60. State if you know who was the custodian of the original grants and concessions of lands under the departamental govern-

134 ment of New Mexico.

Answer. According to law, the office of the secretary of the governor. In practice this was not observed, but the law required it to be done so.

Question 61. State if you know to whom the original petition and grant were delivered after concession was made.

Answer. The original title when concluded passed, according to law, to the archives of the government, and a certified copy was delivered to the parties when called for.

Question 62. Examine the several documents in Exhibit "A," No. 2, and state whether they are the original grant, and the proceedings thereon, in the claim of Juan Bautista Vigil y Alarid and others.

Answer. I have examined the documents mentioned in the question, and as I see in the originals there appears the writing and signatures of the officers, who, acting by virtue of law originally, I declare them to be the same, and that the document is the original.

Question 63. State if you know the custom and usage of the departa-

mental government of New Mexico relative to the delivery of original grants and concessions to petitioners; and if so, what was that usage and custom?

135 Answer. I have stated in my former answer that it is the law to file the originals and give a copy thereof to the parties interested, but the custom, or an abuse of the law, has been to deliver the originals to the parties interested.

Question 64. How lon has that custom existed?

Answer. I cannot say, because sometimes the law was complied with, and in others it was not.

Question 65. State if you know whether the documents in Exhibit "A," No. 2, were filed in the secretary's office; and if so, whether any portion of them were recorded, and by whom.

Answer. I do not recollect whether these were recorded or not, because the orignals are not certified; but if there is any records, and in my handwriting, I will say whether or not it is correct.

DONACIANO VIGIL. [RUBRIC.]

TERRITORY OF NEW MEXICO, *Supreme Court, County of Santa Fé:*

I, Samuel Ellison, clerk of the supreme court for said Territory of New Mexico, do hereby certify that the foregoing twenty-five pages contain, truly and perfectly, the testimony of the witnesses

136 therein named as taken before the hon. supreme court, at the time and place, manner and form therein specified, and between the parties and in the case therein named, and that each witness before he testified was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and that the testimony, after being given and rendered to writing in the presence of the court, was read over to the witness before the court, before the same was signed by said witnesses, and that all said testimony was taken in the presence of the counsel of the parties.

In testimony whereof I have hereunto set my hand and the seal of said court at Santa Fé, this 24th day of January, 1862.

[SEAL.] SAM'L ELLISON, *Clerk.*

On which said paper are the following endorsements, to wit:

Juan B. Vigil y Alarid and others vs. the United States. Depositions filed in open court, this 24th day of Jan'y, 1862.

SAM'L ELLISON, *Clerk.*

137 And it is further ordered that the testimony in this cause shall be taken in vacation before Samuel Ellison, clerk of this court in Santa Fé, the parties first giving ten days' notice of the time of taking the testimony, and one additional day for every twenty-five miles travel from the place of residence of either of the attorneys to and from Santa Fé.

And be it remembered that the following notice was filed in the clerk's office of the supreme court of the Territory of New Mexico, in the words and figures following, to wit:

In the supreme court of the Territory of New Mexico.

JUAN BAUTISTA VIGIL, ANTONIO JOSÉ RIVERA, & José Miguel Houck
vs.
THE UNITED STATES.

To Theodore D. Wheaton, United States district attorney:

Take notice that in pursuance of an order made during the present

term of the supreme court of the Territory of New Mexico, the plaintiffs, on Thursday, the 13th day of February, A. D. 1862, will proceed to examine, upon depositions before Samuel Ellison, clerk of said
138 court, appointed to take testimony under said order, at his office in the city of Santa Fé, between the hours of ten o'clock a. m. and five o'clock p. m. of said day, Donaciano Vigil, J. Albino Chacon, Agustin Duran, José Manuel Gallegos, Felipe Sena, Antonio Sena, David J. Miller, Gaspar Ortiz y Alarid, James H. Holmes, or whoever may be secretary of the Territory of New Mexico at that time, and the acting assistant adjutant general U. S. A'y, as witnesses on the part of the plaintiffs. Said depositions to be used in the trial of said cause, and the taking of the same to be continued from day to day until the same shall be concluded, when and where you can attend if you think proper.

WATTS, HOUGHTON & JONES,
Attorneys for Plaintiffs.

SANTA FÉ, NEW MEXICO, *January 25th*, 1862.

On which said notice are the following endorsements, to wit:
Juan Bautista Vigil y Alarid et al. vs. the United States. Notice.

TERRITORY OF NEW MEXICO, *County of Santa Fé:*

I, Ramon Garcia y Garcia, hereby solemnly swear that I served the within notice on Theodore D. Wheaton, the United States dis-
139 trict attorney of New Mexico, by delivering him a true copy of the same, on the 29th day of January, A. D. 1862, in Santa Fé, in the Territory aforesaid.

RAMON GARCIA Y GARCIA.

Sworn to and subscribed before me this 29th day of January, A. D. 1862.

KIRBY BENEDICT, *Judge.*

And be it further remembered that on the 7th day of January, 1863, the following depositions in the above entitled cause, taken in accordance with the orders of the court, were filed in open court, which said depositions are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck.
vs.
THE UNITED STATES.
} Original suit.

Depositions of witnesses taken in the above entitled cause on the part of the plaintiffs, before Samuel Ellison, commissioner in chancery for that purpose, duly appointed by the supreme court of the Territory of New Mexico, pursuant to the notice hereto attached.

140 Present, T. D. Wheaton, esq., United States dis. attorney, on the part of the defendants: Messrs. Jones & Houghton on the part of plaintiffs.

DONACIANO VIGIL, witness on the part of the plaintiffs, being duly sworn, says:

Question 1. Please examine pages 13, 14, and 15, of record book "C," No. 3, and state what book of record it is, and what official acts of J. Albino Chacon are recorded there.

(Objected to by defendants' attorney.)

Answer. I have examined book marked No. 3, letter "C," pages 13,

14, and 15, of the records of the secretary's office of the Territory, for the years 1847 and 1848, and I find therein on pages 13, 14, and 15, a title of possession in the Jornada del Muerto, donated to Juan Bautista Vigil y Alarid, and Solomon Houck, and Antonio José Rivera, and the possessory act was made by José Alvino Chacon, judge of the first instance, and recorded by me as secretary of the Territory at that time.

Question 2. Under what authority was that record made and kept?

(Objected to by defendants' attorney.)

Answer. The record was made under the authority of the laws of General Kearney, and kept under the same authority.

141 Question 3. State if you know the custom and usage of the governor and departamental assembly of Mexico, under the Mexican government, in making grants and concessions of land; and if so, state whether those grants were made by metes and bounds, and without regard to quantity; and also whether this custom and usage did not extend to all the frontier provinces of Mexico.

(Objected to by defendants' attorney.)

Answer. I know that the custom, more than the law, was to concede to petitioners the land designated in their petitions, despatching their orders to the judge, whose duty it was to execute the act of possession; the limits were designated by a tree, mountain, or any other point, without regard to quantity. This was the custom in New Mexico. I do not know the custom in other States.

Question 4. State whether or not grants and concessions made in this manner were respected as valid by the Mexican government.

(Objected to by opposite counsel.)

Answer. They were respected as valid by the Mexican government, and in proof thereof see the grants to the Gallinas and Las Vegas Grandes.

142 Question 5. Do you know the motive for making such large grants in this frontier department and Indian country; and if so, state the reason that actuated the government for making such grants.

(Objected to by opposite counsel.)

Answer. A special law to the conquerors of New Mexico conceded to them this prerogative. After this country obtained its independence the same custom continued in New Mexico without interruption. The object was to encourage the settlement of the country.

Here the examination on the part of the plaintiffs closed.

Cross-examination by the defendants:

Question 1. How long was Martinez governor of New Mexico?

Answer. All the year of 1844 until May, 1845.

Question 2. What offices did you hold in New Mexico under the departamental government previous to its being taken possession of by the government of the United States?

Answer. From the year 1824 I was in the offices of the military commandant as clerk until the year 1836, and from 1837 until 1846 I
143 was alternately in the offices of the military commandant and in that of the civil government as acting secretary. But my proper position was that of captain in the army of the provincial troops, (precidiales.)

Question 3. In reference to the signatures about which you have testified above, do I understand you swear positively that they are the signatures of the parties whose signatures they purport to be, or to resemble such signatures?

Answer. I did not see the persons sign their names, but from the

character of their firmas and letters I am certain that they are the same that they used in all their writings.

Question 4. How do you know the character of their letters and firmas? Is it from seeing them write or from the examination of letters and papers written by them?

Answer. By having seen them write and being in the same offices where documents were made out.

Question 5. Was the court of the judge of the first instance a court of record or not?

Answer. It was not a court of record. It exercised the same functions as that of the district court under the present laws.

Question 6. Did it keep a record of its proceedings?

144 Answer. The judges of the first instances, when not lawyers, carried on their proceedings with witnesses of their assistance.

Question 7. In what manner did these witnesses give their attestation; by the proceedings being written out and signed by them and the judge of the first instance, or in what other way?

Answer. By virtue of law the judges acted with witnesses of their assistance to legalize their acts—the witnesses being present when the cause was being tried—in writing.

Here the cross-examination closed.

Re-examination by the plaintiffs:

Question 1. State, if you know, the nature of the proceedings of the judges of the first instance in giving judicial possession of lands; and if so, what record was made of those proceedings?

Answer. The proceedings taken were upon the order of the governor, as a special commission, not as an officer of justice but as a governatorial proceeding, and at the conclusion of the commission reported to the governor, in writing, their action, without being compelled to

145 make a record thereof. They sometimes gave the parties the original papers and sometimes a copy of them.

DONACIANO VIGIL. [RUBRIC.]

Sworn to and subscribed before me this 13th day of February, 1862.

SAM'L ELLISON, *Commissioner.*

JOSÉ ALVINO CHACON, of lawful age, being duly sworn, says:

Question 1. How old are you; where do you reside now, and where have you resided the greater part of your life?

Answer. I am fifty-five years of age; I live in Chamisal, in the county of Taos; I have lived in the Chamisal the greater part of my life, but I lived in Santa Fé twenty-two or twenty-three years.

Question 2d. Where were you living on the 6th day of February, 1846?

Answer. I lived in this capital of Santa Fé, New Mexico.

Question 3. What position did you occupy at that time?

Answer. I was judge of the first instance and solicitor of the treasury, appointed by the departamental assembly, with the approval of the governor; and a lieutenant of the militia.

146 Question 4. Did you know Nicolas Quintana at that time; and if so, what position did he occupy?

Answer. I knew him from a child, and know him yet. He was in the office of the governor as clerk at the time referred to.

Question 5. Did you ever see Nicolas Quintana write, and would you know his handwriting if you should see it?

Answer. I have seen him write, and I would know the character of his letters and signature very well.

Question 6. Examine pages 1 and 2 of document No. 10 and state in whose handwriting it is, and whose signature is to the same.

Answer, It is in the handwriting of Nicolas Quintana, and signed by himself.

Question 7. State whether you ever received that document in an official capacity; and if so, what action you took upon it.

(Objected to the last clause of this question.)

Answer. I received the document when acting as judge of the first instance; it was sent to me from the governor's office by the secretary of that office. I proceeded to place Antonio José Rivera and Juan Bautista Vigil y Alarid in possession, and returned to the capital and made out the documents.

147 Question 8. Examine folios 5 and 7, with their reverse pages, of document marked Exhibit "A," No. 2, and state what the writings therein contain.

Answer. I have examined the document, and find it to be the grant I made out to the Jornada del Muerto, and it is in my handwriting, and has my name attached thereto in the several parts where it appears.

Question 9. State whether the rubric at the bottom of the last page of the said document of possession was signed by you; and if so, what effect did the rubric signed in that way have, according to the usages and customs of Mexico?

(Objected to by opposite counsel.)

Answer. I placed the rubric to the document. I do not know whether there is any law relative to the rubric or not. When a superior officer would order an inferior officer to suspend proceedings in any cause, and he does not do it in writing, he sends only his rubric, annexed to a note to that effect. This has been the custom ever since I can recollect, and I have seen it used in very old documents; and the rubric in such cases has the same effect and validity as the name would have had.

148 Question 10. How long did you hold office under the departamental government of New Mexico, and how long did you hold the office of judge of the first instance?

Answer. In the year 1832 I held the office of alderman and prosecuting attorney for the city; do not recollect how long I held this last office, but I think for near four years; I was second alcalde in 1841, and first alcalde and judge of the first instance in 1846. I held these offices until the month of September or October of the same year.

Here the examination in chief of this witness closed.

Cross-examination on the part of the defendants:

Question 1. Is Nicolas Quintana, alluded to in the direct examination, alive?

Answer. He is in a company in the war, and was alive when I last heard from him, which was a short time since.

Question 2. Who brought you the document purporting to be written by Nicolas Quintana and alluded to in your direct examination?

Answer. I do not recollect positively, but I think it was brought to me by Antonio José Ribera, Juan Bautista Vigil y Alarid,

149 and Nicolas Quintana.

Question 3. About what time and where was it delivered to you?

Answer. It was given to me in the month of January or February of 1846. It was delivered to me in my office in Santa Fé.

Question 4. Was the court of judges of the first instance a court of record?

Answer. I do not understand what is a court of record.

Question 5. Did they keep a written statement of their proceedings?

Answer. They did not, except in conciliatory cases; in other cases the proceedings were kept on separate pieces of paper.

Question 6. Did they have a clerk?

Answer. They made up their own papers and called in a person to subscribe as witness, in the absence of the clerk allowed by law.

Question 7. Were the proceedings to which your name is attached, and about which you were referred in your direct examination, judicial proceedings or not?

(Objected to by opposite counsel.)

Answer. They were judicial proceedings, because they were attested by witnesses of assistance.

J. ALBINO CHACON.

150 Sworn to and subscribed before me this 13th day of February, 1862.

SAM'L ELLISON, *Com'r.*

The further taking of depositions herein is continued until Monday next, the 17th inst., at 10 o'clock a. m., by consent of parties.

Monday, 17th February, 1862, 10 o'clock a. m. Present, Theodore D. Wheaton, U. S. dis. attorney; Messrs. Jones & Houghton, esqs., counsel for the plaintiffs; Samuel Ellison, esq., commissioner.

DAVID J. MILLER, being duly sworn, deposes and says:

Question 1. What is book "C," referred to in the testimony of the witness Donaciano Vigil, and state how it came into possession of the surveyor general of this Territory, and by what authority you brought it here.

Answer. I brought a record book here, marked "C," in obedience to a writ of duces tecum, which I find in the land claims branch of the surveyor general's office; and this book is kept in the office as a part of the archives relating to private land claims.

151 Question 2. What position do you occupy in the surveyor general's office?

Answer. I am translator and chief clerk, and I have held the place of translator since the 1st of January, 1861, and that of chief clerk from somewhere about the 1st of July last, 1861. I have been in different positions in the office ever since its organization, in 1854, except about six months in the year 1860, up to the present time.

Question 3. State about what time you recollect seeing book "C" in the surveyor general's office.

Answer. It was there in its present condition in 1861, and I knew it to be there about the winter of 1855 and 1856.

Here the examination of this witness in chief closed.

DAV. J. MILLER.

Sworn to and subscribed before me this 17th day of February, 1862.

SAM'L ELLISON, *Com'r.*

The farther taking of testimony herein is continued until to-morrow, at 10 o'clock a m.

Tuesday, February 18th, 1862, 10 o'clock a. m. Present as on yesterday.

152 AGUSTIN DURAN, first being duly sworn, deposes and says:

Question 1. State, if you know, what was the custom and usage in the departamental government of New Mexico, under the Spanish and Mexican governments, in the granting of lands by the governor, political chief, and departamental assembly, as to extent, description, and boundaries; and further state, if you know, what was the origin and foundation of such custom.

(Objected to by opposite counsel.)

Answer. Their powers were great; at least I so understand it. In regard to quantity there was no restriction. The grant was made in conformity with the prayer of the petition and consent of the authorities. I suppose this was done under the authority of law. This was done here, and also in old Mexico.

Question 2. Do you know for what time this custom existed in the department of New Mexico?

(Objected to by opposite counsel.)

Answer. From what information I have, this custom existed before I was born, and I am now sixty-nine years old.

Question 3. State whether or not such grants were held valid by the Spanish and Mexican governments.

153 (Objected to by opposing counsel.)

Answer. They were regarded as valid, and approved.

Question 4. How were the limits or boundaries of lands generally described in New Mexico, in the documents granting lands?

(Objected to by opposite counsel.)

Answer. They were described by some natural object, such as a mountain, creek, hill, or point.

Here the examination on the part of the plaintiffs closed.

Cross-examination by defendants:

Question 1. Have you ever resided in Old Mexico?

Answer. I lived four years in Chihuahua, and have made many trips into the interior of Old Mexico; I have visited the city of Mexico.

Question 2. How do you know anything about the customs and usages in the granting of lands in Old Mexico?

Answer. I saw the haciendas which had been granted to individuals and possessors of lands.

Question 3. Have you ever held any office under the departamental government of New Mexico, except that of collector of customs; and if so, what office?

154 Answer. I was a member of the departamental assembly.

Question 4. How do you know that the grants alluded to in your direct examination were approved by the Mexican or Spanish governments?

Answer. Because the lands were used by the grantees.

Here the cross-examination closed.

Re-examination by plaintiffs:

Question 1. State if you can name any of the large grants of land in Old Mexico, and if so, name them.

(Objected to by opposite counsel.)

Answer. I know the limits and boundaries of the haciendas of Conde de Jaral, and that of Guatimapé, that of the Torreón, and Enciñas.

That of Jaral is from twenty to thirty leagues across, and that of Torreón about ten leagues across.

Here the examination of this witness closed.

AUGUSTIN DURAN.

Sworn to and subscribed before me this 18th day of February, 1862.

SAM'L ELLISON, *Com'r.*

155 WEDNESDAY, *February 19th*, 1862—10 o'clock, a. m.—Present as on yesterday.

FELIPE SENA, being duly sworn, deposes and says:

Question 1. How old are you; where do you reside; and where have you resided during the greater part of your life?

Answer. I am fifty-five years of age; I reside in Santa Fé; and I was born and have lived here all my life.

Question 2d. What offices did you hold under the departamental government of New Mexico?

Answer. I served in the departamental assembly as member of that body. I was prefect and alcalde at different times; I was captain of the auxiliary troops by appointment from the general government, and I was acting governor when General Mariano Martinez was appointed to that office, and delivered the governorship to him.

Question 3. Examine document marked Exhibit "H," and state what the document is.

(Objected to by opposite counsel.)

Answer. On examination of the document, I find that it was drawn up by myself and José Manuel Gallegos and Tomas Ortiz, as members of the departamental assembly. We were appointed a committee for that purpose. We were instructed to examine the laws, and to ascer-

156 tain if the prayer of the petition could be granted, and we reported in favor of granting the prayer of the petition, and the report was adopted by the departamental assembly.

(Objected to by opposite counsel.)

Question 4. State whether the document referred to is a copy, or the original, of the proceedings referred to.

(Objected to by opposite counsel.)

Answer. I think it is a copy.

Question 5. State if you know whether the original of this document is in existence, or lost, or what has become of it.

(Objected to by opposite counsel.)

Answer. I do not know, but suppose it ought to be in existence.

Question 6. At what time was the session of the departamental assembly held in which the report was made?

(Objected to by opposite counsel.)

Answer. (He did not recollect until the document was shown to him, when he stated) At the session of 1846, on the 10th of January.

Here the examination of this witness closed.

FELIPE SENA.

Sworn to and subscribed before me this 19th day of Feb'y, 1862.

SAM'L ELLISON, *Com'r.*

157 JOSÉ MANUEL GALLEGOS, being duly sworn, deposes and says:

Queston 1. What is your age; where were you born; where do you reside; and where have you resided the greater part of your life?

Answer. I am forty-five years of age; I was born in the Territory of

New Mexico; I now reside in Santa Fé; I have resided the greater part of my life in the Territory.

Question 2. What positions or offices did you occupy under the departamental government of New Mexico?

Answer. I was a member of the legislative assembly of New Mexico, I believe, for the years 1843, 1844, 1845, and 1846, and, in the absence of the governor and any member my senior, I was the presiding officer of that body.

Question 3. Did you know Nicolas Quintana y Rosas, and did you ever see him write, and would you know his handwriting if you should see it?

Answer. I did; he was our clerk. I have seen him write frequently, and I would know his handwriting if I should see it.

Question 4. Examine document No. 9, and state in whose handwriting it is in, and whose signatures are attached to the same.

Answer. It is in the handwriting of Nicolas Quintana y Rosas, and signed by him and myself also.

158 Question 5. What position did you occupy in the departamental assembly of New Mexico when you signed the said document?

Answer. I was president of the assembly.

Question 6. Please examine document marked Exhibit H, and state what it contains and purports to be.

(Objected to by opposite counsel.)

Answer. It contains the report of a committee on the prayer of Juan Bautista Vigil y Alarid, Antonio José Rivera, and Miguel Houck, relative to a grant of land in the Jornada del Muerto.

Question 7. Who composed the committee that made the report?

(Objected to by opposite counsel.)

Answer. I do not recollect; but I find the names of José Manuel Gallegos, Felipe Sena, and Tomas Ortiz written in the document, which appears to be a copy.

Question 8. What was the action of the departamental assembly upon the report of that committee?

Answer. The departamental assembly granted the land. That I recollect very well.

Question 9. State if you know what has become of the records and archives of the departamental assembly of 1846.

159 Answer. I do not know positively. I do not know positively, but I suppose they were deposited among the archives of the Territory; at least it was the custom to deposit them in that office.

Here the examination of this witness in chief closed.

Cross-examination:

Question 1. Was the departamental assembly a legislative body?

Answer. It was.

Question 2. Did they have a clerk, and keep a record of their proceedings?

Answer. They had a clerk, and kept a record of their proceedings.

Here the cross-examination closed.

Re-examined:

Question 1. How was the record kept?

Answer. The proceedings were kept on sheets of paper sewed together in form of a book.

Here the examination of this witness closed.

J. M. GALLEGOS.

Sworn to and subscribed before me this 19th day of February, 1862.

SAM'L ELLISON, *Com'r.*

160 The further taking of testimony herein is continued until Saturday next, 22 inst., 1862.

SATURDAY, *February* 22, 1862—10 o'clock a. m.—Present, Theo. D. Wheaton, esq., U. S. dis. Attorney; Messrs. Jones & Houghton, esqr's, plaintiffs' counsel; and Samuel Ellison, commissioner.

By agreement of parties, the further taking of testimony in this cause is closed for the present under the notice.

TERRITORY OF NEW MEXICO,
County of Santa Fé:

I, Samuel Ellison, clerk of the supreme court of said Territory, do hereby certify that the foregoing eighteen pages of testimony contain truly and perfectly the testimony of the witnesses Donaciano Vigil, J. Albino Chacon, David J. Miller, Augustin Duran, Felipe Sena, and J. M. Gallegos, as taken before me, at the time and place and manner and form therein specified, and between the parties, and in the cause therein named, and that each witness before he testified was duly sworn
161 by me to testify the truth, the whole truth, and *and* nothing but the truth.

In testimony whereof I do hereunto set my hand and affix the seal of the supreme court at Santa Fé, this 22d day of February, 1862.

[SEAL.] SAM'L ELLISON,
Clerk Supreme C't.

On which said depositions are the following endorsements, to wit:

Juan B. Vigil y Alarid & others, vs. The United States. Depositions. Filed in open court this 7th day of Jan'y, 1863. Sam'l Ellison, clerk.

And be it further remembered that on the 5th day of January, A. D. 1863, being the first day of the January, A. D. 1863, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, MIGUEL Houck, and Antonia José Rivera
162 *vs.* } Original suit.
THE UNITED STATES.

Now, on this day, come the parties, by their counsel, and, by their agreement, this cause is continued until the next term of this court, and both parties have leave to take further testimony in conformity with the previous orders made in this cause.

And be it further remembered that on the 7th day of January, A. D. 1863, being the third day of the January A. D. 1863, term of said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN B. VIGIL Y ALARID ET ALS.
vs.
THE UNITED STATES.

By agreement of parties, by their counsel, it is ordered that publication of depositions taken herein be made.

The district attorney for the United States now presents five bills of exceptions taken at the last term of the supreme court, which were now signed and sealed by the judges, and which said bills of exceptions are in the words and figures following, to wit:

163 In the supreme court New Mexico, of Jan'y term, A. D. 1862.

UNITED STATES
ats.
J. BAUTISTA VIGIL ET AL.

Be it remembered that upon the trial of this cause the following question was proposed by plaintiffs to Donaciano Vigil, a witness produced and sworn by them on said trial:

Are you acquainted with the usages and customs of the Territory of New Mexico up to the eighteenth day of August, A. D. 1846; and, if so, state your means of acquaintance therewith.

To which counsel for the defendants objected, and the objection was overruled by the court; to which opinion of the court in overruling said objection defendants, by their counsel, excepts, and prays that his bill of exceptions be signed, sealed, and made a part of the record; which is done accordingly.

Presented and signed January 7th, 1863.

KIRBY BENEDICT, [SEAL.]
Chief Justice.
SYDNEY A. HUBBELL, [SEAL.]
Asso. Justice.
J. G. KNAPP, [SEAL.]
Asso. Justice.

On which said bill of exceptions is the following endorsement, to wit:

Filed in open court this 7th day of January, 1863. Sam'l Ellison, clerk.

164 In the supreme court New Mexico, of Jan'y term, A. D. 1862.

Be it remembered that on the trial of this cause the following question was propounded to Donaciano Vigil, a witness for them in this cause:

Examine the several documents in Exhibit "A," No. 2, and state whether they are the original grant, and the proceedings thereon, in claim of Juan Bautista Vigil y Alarid & others.

To which the district attorney objected, which objection was overruled by the court; to the opinion of the court in overruling said objection defendants, by their counsel, except, and pray that this their bill of exceptions be signed, sealed, and made a part of the record; which is done accordingly.

Presented and signed January 7, 1863.

KIRBY BENEDICT, [SEAL.]
Chief Justice.
SYDNEY A. HUBBELL, [SEAL.]
Asso. Justice.
J. G. KNAPP. [SEAL.]

On which said bill of exceptions is the following endorsement, to wit:

Filed in open court this 7th day of January, 1863. Sam'l Ellison, clerk.

165 In the supreme court of New Mexico, of January term, A. D. 1862.

Be it remembered that, upon the trial of this cause, the following question was propounded to Donaciano Vigil, a witness produced and sworn for the plaintiffs in the cause, to wit:

Who was the custodian of the proceeding of the departamental government of New Mexico?

To which defendants, by their counsel, excepted, and prays that this their bill of exceptions be signed, sealed, and made a part of the record; which is done accordingly; and also that to said question witness gave the following answer, to wit:

According to law the office of the secretary of the governor.

To which answer defendants, by their counsel, except, and pray that this his bill of exceptions be signed, sealed, and made a part of the record; which is done accordingly.

Signed January 7, 1863, and presented same day.

KIRBY BENEDICT, [SEAL.]
Chief Justice.
SYDNEY A. HUBBELL, [SEAL.]
Asso. Justice.
J. G. KNAPP. [SEAL.]

166 On which said bill of exceptions is the following endorsement, to wit:

Filed in open court this 7th day of January, 1863. Sam'l Ellison, clerk.

UNITED STATES *ats.* VIGIL ET AL.

In the supreme court New Mexico, of January term, A. D. 1862.

Be it remembered that, on the trial of this cause, Donaciano Vigil, a witness produced and sworn on the part of the plaintiffs, was asked the following question, to wit:

What position did José Alvino Chacon hold under the departamental government of New Mexico?

To which said witness made the following answer, to wit:

He held the office of first alcalde of the ayuntamiento, and exercised the functions of judge of the first instance, by provision of law.

The district attorney moved to strike out that part of the answer relating to the provisions of the law, as being the opinion of witness on a question of law.

Which motion was then overruled by the court. To the opinion of the court in overruling said motion defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and
167 made a part of the record; which is done accordingly.

Presented and signed January, 1863.

KIRBY BENEDICT, [SEAL]
Chief Justice.
SYDNEY A. HUBBELL, [SEAL.]
Asso. Justice.
J. G. KNAPP, [SEAL.]
Asso. Justice.

On which said bill of exceptions is the following endorsement, to wit: Filed in open court this 7th day of Jan'y, 1863. Sam'l Ellison, clerk.

In the supreme court New Mexico, of January term, A. D. 1862.

VIGIL & OTHERS
vs.
THE UNITED STATES.

Be it remembered that, on the trial of this cause, the following question was proposed to Donaciano Vigil, a witness produced and sworn on the part of the plaintiffs, to wit:

How long did José Albino Chacon hold office under the proclamation of Gen'l Kearney, after possession was taken of New Mexico by the United States?

To which defendants objected, and their objection was then overruled by the court. To the opinion of the court in overruling said ob-
168 jection defendants, by their counsel, except, and pray that their bill of exceptions may be signed, sealed, and made a part of the record; which is done accordingly.

Presented and signed this 7th day of January, A. D. 1863.

KIRBY BENEDICT, [SEAL.]
Chief Justice.
SYDNEY A. HUBBELL, [SEAL.]
Asso. Justice.
J. G. KNAPP, [SEAL.]
Asso. Justice.

On which said bill of exceptions is the following endorsement, to wit: Filed in open court this 7th day of Jan'y, 1863. Sam'l Ellison, clerk.

And be it further remembered that on the third day of January, A. D. 1865, being the 2nd day of the January, A. D. 1865, term of said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO Rivera, and José Mig'l Houck
vs.
THE UNITED STATES.
} Original suit.

169 And now, on this day came the said parties, by their counsel; whereupon the plaintiffs introduced Merrill Ashurst, esq., as a witness in this behalf, and said Ashurst, being duly sworn, proceeded to testify; and his testimony being reduced to writing by the clerk, in the presence of the court, and signed by said witness,

The plaintiffs there announced to the court that they had concluded the taking of testimony in their behalf.

And on motion of the said defendants, by their counsel, leave is granted them to take testimony in open court in their behalf.

And be it further remembered that on the 4th day of January, A. D. 1865, being the 3d day of the January, A. D. 1865, term of the said supreme court of the Territory of New Mexico, the following proceedings

were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO Rivera, & José Mig'l Houck
vs.
THE UNITED STATES.
} Original suit.

170 And now, again, on this day come the parties, by their counsel, and proceeded, in open court, to take the depositions upon the part of the United States, of Charles Blumner, Merrill Ashurst, Richard H. Tompkins, and William H. Henry, and the same were severally taken and reduced to writing by the register and by the respective witnesses, and which said depositions, as reduced to writing, are in the words and figures following, to wit:

Testimony taken by order of the court, in the case of Juan Bautista Vigil y Alarid, Antonio Rivera, and José Miguel Houck against the United States, taken in open court, to be read upon the trial of the said cause, this 3d day of January, 1865.

MERRILL ASHURST, of lawful age, first being duly sworn, deposes and says:

Inter. 1. Are you acquainted with the handwriting of William Pelham, former surveyor general of New Mexico?

Answer. I think I am.

Inter. Examine Exhibit "D," and state whether or not it is in his handwriting.

Answer. To the best of my knowledge and belief, it is.

M. ASHURST.

171 Sworn to and subscribed before me this 3d day of January, 1865.

SAM'L ELLISON, *Clerk.*

The further taking of testimony herein is continued until to-morrow.

JANUARY 4TH, 1865.—Testimony on the part of the defendants:

CHARLES BLUMNER, being sworn, says:

Question 1. Are you acquainted with the tract of country called the Jornada del Muerto, in the southern part of this Territory?

Answer. I am.

Question 2. Examine the grant in this case, and state what the extent of it is.

Answer. I have passed over the country frequently, but do not recollect the points sufficiently to make any statement as to the extent of the grant; from east to west, however, it is a vast extent of country, consisting of plains. From north to south, along the road, I have some recollection, and the best of my recollection is that the distance through the grant from north to south is about from fifty to sixty miles. I calculate the distance of the whole Jornada, from river to river, to
172 about ninety miles, as it is considered and called in this country, more or less.

Cross-examination by plaintiffs:

Question 1. State whether the country is not utterly worthless, except for pasture, and indifferent for that on account of the scarcity of water.

Answer. My impression is the country is only fit for pasture, and not for agriculture. Most of the portions I have travelled through are rocky or gravelly. There are some good bottoms. It is sometimes wholly destitute of water, and sometimes none is to be found on the road from river to river. I have sometimes travelled it when none could be found. After rains water can be found at the Laguna, Aleman, and Point of Rocks, on the route.

Re-examined by defendants:

Question 1. Do you know anything of the country except that immediately adjacent to the road?

Answer. With the exception of two or three points on the right-hand side of the road, I know nothing of the land contained in the grant, except immediately adjacent the road.

Question 2. Is not the soil through the grant generally fertile?

173 Answer. I do not consider it fertile. I consider it so gravelly as not to be fit for agriculture, except in the bottoms above referred to.

CH'S BLUMNER.

MERRILL ASHURST, being duly sworn, says:

Question 1. Examine the grant in this case, and state whether you know the points mentioned in it.

Answer. I believe I know the points mentioned in the grant.

Question 2. From the boundaries of the grant, state about what is the extent of the grant.

Answer. From the Mesita del Contadero, which is about five or six miles this side of the point known as the Laguna, and nearly opposite the spring known as the Ojo del Muerto, to the Roblerito, about six miles below where you strike the river on the south, to the best of my knowledge and belief, is about sixty-five miles, which constitutes the extent of the grant from north to south. From east to west, from the appearance to the eye, and from the best information I have received, I would judge it to be in places near one hundred and fifty miles from the river to the range of mountains on the east.

Question 3. What are the general productions of the country?

174 Answer. Gramma grass and soap weed. The gramma grass grows upon table lands generally; the soil upon which the gramma grass grows is generally known as mulatto or red land, and of strong soil. I know none of it that would not be productive if it could be irrigated with water.

Question 4. Are you acquainted with the bottom lands on the grant, and what is their extent?

Answer. I know the bottom lands on the grant from Roblero to Roblerito, a distance of about six miles. They are narrow and small in extent. The other bottom lands on the grant I know nothing of.

Cross-examined by plaintiffs:

Question 1. Why is it that no settlement of any kind has ever been made within the extent of country alluded to by you?

Answer. For two reasons, according to my understanding: There is no permanent water on the grant, nor wood, except upon the river, known to any one, except the river and some few small springs, and I believe the white man cannot subsist and cultivate the soil without water. The other is the hostility of the Indians.

Re-examined by defendants:

Question 1. Would the same objections in regard to water apply to the bottom lands on the grant?

175 Answer. I understand that the bottom lands lie on the river, and acequias may be taken out to irrigate them; hence the same objection cannot apply to them.

M. ASHURST.

R. H. TOMPKINS, being duly sworn, says:

Question 1. Examine the boundaries of the grant, and state if you are acquainted with the country contained in them.

Answer. I am acquainted with the road which passes over the Jornada, through the grant, and with the lands the eye can see adjacent to the road.

Question 2. State, as near as you can judge, what is the extent of the grant.

Answer. I do not know by name the Mesita of the Contadero; but, from the point specified in Mr. Ashurst's testimony as being that point, to the southern boundary, according to the best of my judgment, is from sixty to seventy miles. I know nothing of the distance from the road to the river on the west, nor from the road to the mountains on the east, except the appearance to the eye. I would judge from the mountains on the east to the mountains on the west of the road to be from twenty-five to forty miles in width. It is a large extent of country. The

176 mountains on the west of the road I shouldj udge to be five miles distant from the road, and some places further. The space between the mountains on the west of the road and the river, I know nothing about.

Question 3. How does the country lay on each side of the road?

Answer. Between the mountains it is an elevated plain, a little undulating, but generally presents a level appearance.

Question 4. If water could be obtained for the purpose of irrigation, would the land generally be susceptible of cultivation?

Answer. The land I have passed over I think would.

Cross-examined by plaintiffs:

Question 1. Does not the altitude of this plain preclude the possibility of its being irrigated from the river?

Answer. I think it does, unless at an enormous expense of more than the value of their lands and their productions.

Question 2. What would you consider the cash value of the lands described in the grant?

Answer. I do not consider it of any cash value. Plaintiff Vigil applied to me to assist in the prosecution of this claim, offering me a portion of the lands for my services, and I refused to be engaged

177 upon those conditions, stating to him that I would not prosecute the claim for the whole of the grant when recovered.

R. H. TOMPKINS.

W'M H. HENRY, being duly sworn, says:

Question 1. Do you know the boundaries of the grant in question? If so, state the extent of the country embraced within those boundaries.

Answer. From north to south, I would say sixty-five miles; from east to west, fifty-five miles.

Cross-examined by plaintiffs:

Question 1. Provided the northern boundary of this grant is three leagues south of the Ojo del Muerto, how much will it reduce the distance from north to south?

Answer. It would reduce it to about fifty miles.

W'M H. HENRIE.

TERRITORY OF NEW MEXICO,
Supreme Court, County of Santa Fé:

I, Samuel Ellison, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing seven and part of the eighth page contain truly and perfectly the testimony of the wit-
178 nesses therein named, as taken before the hon. supreme court, at the times and places, manner and form, therein specified, and between the parties and in the case therein named; and that each witness, before he testified, was duly sworn by me to testify the truth, the whole truth, and nothing but the truth; and the testimony, after being given and reduced to writing in the presence of the court, was read over to the witnesses before the court before the same was signed by said witnesses; and that all said testimony was taken in the presence of the counsel of the parties.

In testimony whereof I hereunto set my hand and the seal of said court at Santa Fé, this 4th day of January, A. D. 1865.

[SEAL.] SAM'L ELLISON,
Clerk of said Court.

On which said depositions are the following endorsements, to wit: J'n B. Vigil y Alarid & others vs. The United States. Depositions. Filed in my office this 4th day of January, 1865. Sam'l Ellison, clerk supreme court N. M.

179 And now both parties having concluded taking of depositions in this cause, it is ordered by the court that this cause be sat down for hearing, in the introduction of proofs and arguments of counsel, upon Friday next, the 6th instant.

And be it further remembered that on the 6th day of January, A. D. 1865, being the 5th day of the January (A. D. 1865) term of said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

The court now appoints Samuel Ellison translator to this court, who appeared, and in open court was duly sworn as such.

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES. } Original suit.

This being the day set for the hearing of this cause, the parties appeared, by their counsel, and proceeded to the introduction of proof on the part of plaintiff, and, there not being time to conclude the
180 same on this day, this cause is continued until to-morrow.

And be it further remembered that on the 7th day of January, A. D. 1865, being the sixth day of the January (A. D. 1865) term of said supreme

court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, & José Miguel Houck
vs.
THE UNITED STATES.
} Original suit.

This day came again the said parties, by their counsel, and the introduction of testimony was continued on the part of the plaintiffs, and, there not being time to conclude the same, this cause is continued until Monday next, at 10 o'clock a. m.

And be it further remembered that on the 9th day of January, A. D. 1865, being the 7th day of the January A. D. 1865 term of the said supreme court of the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

181 JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES.
} Original suit.

This day came again the parties, by their counsel, and the introduction of testimony is continued on the part of the plaintiffs, and, there not being time to conclude the same on this day, this cause is continued until to-morrow.

And be it further remembered that on the 10th day of January A. D. 1865, being the 8th day of the January A. D. 1865 term of the said supreme court for the Territory of New Mexico, the following proceedings were had; which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES.
} Original suit.

This day came again the plaintiffs, by their counsel, and the introduction of testimony was concluded by both parties, and the plain-
182 tiffs by their counsel tendered a bill of exceptions to the refusal of the court upon yesterday to admit certain papers in evidence offered by the plaintiffs and referred to in the said bill, which bill is now signed by the chief justice as a part of the proceedings of this cause; which said bill of exceptions is in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Ribera, & José Miguel Houck
vs.
THE UNITED STATES.
} Petition for confirmation of title.

Be it remembered that upon the trial of this cause before the supreme court of the Territory of New Mexico, at the Jan'y term of said court, 1865, the petitioners offered in evidence what purported to be a certified copy of the original title in this case, consisting of the grant of the

territorjal assembly under date of Jan'y 10th, 1846; the communication of Armijo of same date; the order for possession, under date of February 4, 1846; and the acknowledgement of the reception of said order by J. Albino Chacon, under date of 6th of February, 1846; the order of J. Albino Chacon, under date of Feb. 7, 1846, and his proceedings under said order; which papers are in the words and figures
183 following, to wit; and of which said papers the following is the original translation, to wit:

SANTA FÉ, *January 10th*, 1846.

This petition is referred to the most excellent assembly in order that if they consider the offers which, in the form of conditions, the petitioners make beneficial to the commonwealth, that the land asked for be granted to them, directing that they be placed in legal possession as the law directs. This government omits to recommend the petition to its excellency the honorable departamental assembly, as the nature and circumstances connected therewith, and never heretofore planned, is explained in said petition.

(Signed) ARMIGO,
(Signed) MIGUEL E. PINO,
First Clerk.

SANTA FÉ, *January 10th*, 1846.

This assembly grants to citizens Antonio José Rivera and Juan Bautista Vigil y Alarid the land asked for at the place known as the Jornada del Muerto, for the purpose of constructing wells, and cultivating the land as far as their means will permit, without being entitled to an exclusive right to the pasture, and debarring from any of the privileges of this grant the foreigner Michael Houck, as he is prohibited by
184 article 9th of the laws of March 11th, 1842, from acquiring lands in the frontier departments, without the previous consent of the supreme government of the nation.

(Signed) JOSÉ CHAVES,
(Signed) NICOLAS QUINTANA Y ROSAS,
Secretary.

OFFICE OF THE SECRETARY OF THE GOVERNMENT.

His excellency the governor directs me to require you that so soon as the document is presented to you, accrediting the grant made by the most excellent departmental assembly on the 10th of January last past, to Don Juan Bautista Vigil y Alarid, and Don Antonio José Rivera, to the land known as the Jornada del Muerto, from which the naturalized Michael Solomon Houck is excluded, he being a foreigner, who upon presentation of the proper naturalization papers, shall in that case be considered as one of the grantees, the same as those above mentioned, whom you will proceed to place in possession of said land, giving them the boundaries called for in their petition, not having been changed by the most excellent assembly, which only restricted the exclusive right & patronage which shall be free to travellers who may go and
185 come over the road, and only to the owners of stock, and shepherds of this and other departments, requiring you also, by order of his excellency, to attach to the granting deed a legal copy of this communication, for the protection of the parties interested, and give them more security to undertake the work of opening wells, which will be of great utility to the public by preventing many losses, and secur-

ing not only their lives but those of their animals at very little cost; of all which you are informed by order of his excellency for its due compliance and execution, acknowledging the receipt hereof.

God and liberty. Santa Fé, February 4th, 1846.

(Signed) NICOLAS QUINTANA,
Acting Secretary.

To the JUSTICE and JUDGE of ORIGINAL JURISDICTION
of this Capital, Santa Fé.

The above is a true and legal copy of the original, among the papers placed under my charge for record, corrected and compared by me and those in my attendance, with whom I certify appointment, I certify.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

186 Seal third, [SEAL,] four rials.

Years of 1846 and 1847.

In the city of Santa Fé, capital of the department of New Mexico, on the sixth day of the month of February, one thousand eight hundred and forty-six, I, citizen José Albino Chacon, first justice of the corporation of this city and judge of original jurisdiction of the central district, stated, that by virtue of the superior order, of the fourth instant, addressed to me by the secretary of government, and citizens Juan Bautista Vigil y Alarid and Antonio José Rivera having presented themselves at my office, with the decree of the most excellent departmental assembly of the tenth of January last, granting to them the Jornada del Muerto, and confirmed by his excellency the governor in his superior official order of the fourth instant, by virtue whereof, I, the aforesaid justice, will proceed to give them the legal personal possession of said land to the aforesaid grantees, on condition that if D. Miguel Houck shall present the record referred to in the superior communication above referred to he shall be declared as a participant in said land, with the same rights as his associates, as appears by their written petition,
187 and by this decree he so provided, ordered, and signed, with attending witnesses, I certify.

(Signed) J. ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

SANTA FÉ, *February 7th*, 1846.

Let a certified copy of the superior order of his excellency the governor, of the fourth instant, be attached to these decrees, as directed therein. I, citizen José Albino Chacon, first justice and judge of original jurisdiction of the district so decreed, acting with attending witnesses.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

In obedience to the foregoing decree and the above superior order, of the fourth of February last past, a legal copy whereof appears above, I have gone backwards and forwards over the land granted to the parties referred to in the same decree of the most excellent assembly. From

the practical knowledge I have of the aforesaid land of the Jornada del Muerto, and according to the well-received laws, ceremonies, and
188 customs in this department, I proceeded to give them the possession which in fact and by right they are entitled to, no third parties having a better title having presented themselves up to this time, and opposition being made to the public land which has been granted in fee to the grantees, Juan Bautista Vigil y Alarid and Antonio José Rivera, who remain in the quiet and peaceful possession of said land, from which in proof of lawful possession they have pulled up weeds and grass, throwing stones and crying aloud with joy in honor of the supreme Mexican government, from whose generosity they received said possession, of which they acknowledge and will defend as permanent boundaries the following points: On the north the little table land of the Contadero; on the south the old site of Doña Ana at Roblerito; on the east the range of the Sandia mountain and its tributaries on that side; on the west the River del Norte, in which directions the parties will erect proper monuments to avoid confusion, with the understanding that if José Miguel Solomon Houck, one of the partners in the company, shall present the proper naturalization papers he shall be considered as one of the proprietors, holding equal rights with Messrs. Vigil and Rivera, being privileged further to admit as associates and
189 partners in said land such persons as they may desire, and in whom they may have confidence; and in testimony thereof, and that this document may be to the grantees a deed of possession, I have executed this, which I authorize and sign, on the fifteenth day of the month of March, one thousand eight hundred and forty-six, with the parties interested and my attending witnesses, with whom I act in the absence of a notary. I certify.

Fees for placing in possession 150 dollars.

(Signed) JOSÉ ALBINO CHACON.
(Signed) JUAN BAUTISTA VIGIL Y ALARID.
(Signed) ANTONIO JOSÉ RIVERA.

Attending: (Signed) TELERFORO SALAZAR.
(Signed) JESUS MARIA TAFOYA.

In the city of Santa Fé, capital of the department of New Mexico, on the sixteenth day of September of this year, one thousand eight hundred and forty-six, I, citizen José Albino Chacon, first justice and judge of original jurisdiction of this capital and its district, stated that Don José Miguel Solomon Houck, having presented his naturalization papers before the court under my charge, let the original thereof be attached to these granting documents, and therefore the said Houck is
190 to be considered as a participant in, and one of the proprietors of the above-mentioned land of the Jornada del Muerto, with the same rights as the other partners, Messrs. Juan Bautista Vigil y Alarid and Don Antonio José Rivera, according to the directions of the most excellent assembly, dated the tenth day of January of this year, and the official communication of his excellency the governor of the fourth of February of the same year; I, the aforesaid justice so provided, acting with attending witnesses, in the known absence of a notary public. I certify.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

NOTE.—Don Manuel Armendaris, resident of the department of Chihuahua, having claimed part of the land contained in this grant, on the northern boundary, at the little table land of the Contadero, it is ordered, by direction of his excellency the present governor, that the owners and proprietors of the Jornada del Muerto shall not proceed to construct the wells until the suit between Armendaris and the heirs of the late Don Francisco Xavier Chaves shall be decided, and therefore the term
191 of five years, limited for the construction of the wells, shall be counted from the day on which the said northern boundary shall be established, be it by the said Armendaris, or the heirs of the late Chaves, the other parties to the suit, and in order that it may so appear, I have made this note, which I have rubricked.

[RUBRIC.]

Also paper marked "D" was offered in evidence, and paper marked "I," in the words and figures following, to wit:—

SURVEYOR GENERAL'S OFFICE,
Santa Fé, New Mexico, July 6th, 1869.

GENTLEMEN: I have the honor to inform you that after a critical examination of your claim, which embraces the Jornada del Muerto, it is the opinion of this office that the claim is one of those that should be rejected for several reasons, among which, one is, that the petition offers to comply with certain conditions therein set forth. You have not introduced proof to show that those conditions have been complied with, and the supposition is that no attempt has been made to do so, and as the said conditions are the principal basis of the grant, the grant cannot be valid until the promises made shall be complied with. Therefore,
192 the report from this office will be adverse to the approval of the grant.

If you desire to take an appeal from the decision of this office, I will forward, with pleasure, your appeal, together with my report, which will be forwarded in September next.

I have the honor to subscribe myself your very ob't serv't,
(Signed) W'M PELHAM,
Surveyor General.

Messrs. J. B. VIGIL & others,
Santa Fé, N. M.

Translated from the original in Spanish.

SANTA FÉ, N. M., *July* 25, 1859.

Hon. W'M PELHAM, *Surveyor General:*

SIR: Your communication of 6th of July, 1859, informing us that our grant, for various reasons, had been decided adversely to us, has been received. It is our wish to appeal from your decision to that of Congress, and we feel confident in being able to establish that the grant is in form, and valid in all respects, and that the non-compliance with the conditions subsequent annexed to said grant, incurs no forfeiture of our rights, for the reason that the action of the constituted authorities of the country prevented the compliance on our part with the con-
193 ditions of the grant, and hence no fault attaches to us.

JUAN BAUTISTA VIGIL Y ALARID & CO.,
By HOUGHTON WATTS & JACKSON, *Attorneys.*

On which said paper is endorsed as follows, to wit:

Copy. Notice of appeal from sur. general. "I."

Also a paper purporting to be the report and decision of the surveyor general in this case, in the words and figures following, to wit:

JUAN BAUTISTA VIGIL ET AL.
vs.
THE UNITED STATES.

This case came on to be heard on the 16th July, when it was finally submitted by counsel.

On the 28th day of December, 1845, Antonio José Rivera, for his patron, Juan Bautista Vigil y Alarid, and José Miguel Houck, petitioned the government of the department of New Mexico for a tract of land known as the Jornada del Muerto, with the boundaries therein set forth, solemnly binding themselves, upon receiving the grant, and being placed in possession of the land, to commence the construction of two wells, at the most central points on the Jornada, for the purpose of supplying water to travellers and stock, and also to establish two factories
194 of utility to the department. These factories were to be supplied with modern improved machinery, and the whole to be concluded within five years. They were also to have two cannons, and a sufficient number of fire-arms to repel any attack from hostile Indians.

On the 10th day of January, 1846, Manuel Amijo, the governor of the department, referred the petition to the departmental assembly, recommending that the grant be made if the propositions made by the applicants in the form of conditions were deemed to be of sufficient benefit to the country, and calling their attention to the matter of those conditions, which at that time was a novel undertaking in the department. On the same day the departamental assembly granted the land known as the Jornada del Muerto to Antonio José Rivera, and Juan Bautista Vigil y Alarid, for the purpose of opening wells, and cultivating as much land as their means would allow, excluding Michael Houck from any participation in the grant, on account of the prohibition contained in article 9th of the law of March 11th, 1842, which forbids foreigners from acquiring lands in the frontier departments without the previous knowledge of the supreme government.

195 On the 4th day of February, 1846, Nicolas Quintana, acting secretary, by declaration of the governor, orders the justice of the peace of Santa Fé to place the grantees in possession of the land, and also directs an equal interest to be given to Houck, upon the presentation of his naturalization papers.

On the 15th day of March, 1846, José Albino Chacon, first justice of Santa Fé, certifies that he placed Antonio José Rivera and Juan Bautista Vigil in possession of the land granted to them.

On the 16th day of September, 1846, the same José Albino Chacon declares José Miguel Solomon Houck as a party to said grant, he having filed the required naturalization papers.

Immediately after this statement, made after the sovereignty of the country had changed, there appears a memorandum or note, without any written signature, but merely a rubric, to the effect that as Manuel Armendaris, a resident of the department of Chihuahua, claimed a portion of the land embraced within the grant to the Jornada del Muerto, the grantees forbidden to prosecute the work until a certain suit pending between the said Armendaris and the heirs of Francisco Xavier Chaves should be decided, and the period of five years given for the conclusion of the work was to commence from the time of the
196 termination of said suit, by which the northern boundary would be determined.

Immediately thereafter follows the original certificate of naturalization declaring José Miguel Houck a citizen of the republic of Mexico.

The parties also file the original letter from José Manuel Gallegos, the president of the departmental assembly, returning the petition of the grantees with the action had thereon.

The original order to Albino Chacon, directing him to place the parties in possession, is also filed, as well as the acceptation of the resignation of Albino Chacon, by Juan Bautista Vigil y Alarid, acting governor, on the 21st September, 1846. An agreement is also filed dated May 3d, 1859, between Juan Bautista Vigil y Alarid and associates of the first part, and Albino Chacon, of the second part, by which a one-fourth interest is conveyed to the said Albino Chacon, in consideration of the services rendered by him in placing the parties in possession of the grant. A certified copy of the proclamation of Brig. Gen'l S. W. Kearney to the people of New Mexico, upon taking possession of the country, in the name of the United States, on the 18th August, 1846, also accompanies the papers in the case.

197 The name of José Albino Chacon appears signed to the original petition asking for the grant, but as his name does not appear in the granting decree, and as he was directed to place the parties in possession, which would not have been done were he an interested party, it is believed he attached his name thereto at a very recent date, being after the transactions in the case took place, and it has been so admitted by one of the grantees.

The papers acted upon are the originals filed by the claimants.

This is one of the most important cases that have been filed in this office for adjudication, embracing, as it does, an area of nearly two and one-half millions of acres of land, a large portion of which has been subdivided and is now ready to be brought into market, and has received my most careful attention and close examination.

The parties claim a confirmation of their grant for the following reasons: First. On account of the originality and genuineness of the documents. Second. That the grant was made in due accordance with the laws and customs in force at that time. Third. That the parties were forbidden from taking any further steps towards the construction of the wells and the establishment of the factories until a certain suit

198 between Pedro Armendaris and the heirs of Francisco Xavier Chaves should be decided, and by which the northern boundary of the grant in question would be determined. Fourth. That the non-compliance of the conditions of the grant under the late government does not forfeit their rights under the government of the United States.

It is not necessary to dwell on the first and second points submitted in the brief of the claimants, as the originality and genuineness of the documents not questioned, and is fully proven in evidence.

The petition made by the parties asking for the grant solemnly bind themselves, upon being placed in possession of the land, to commence the construction of wells, and the establishment of certain factories. This possession, as will be seen by the certificate of the justice, was given on the 13th day of March, 1846, and no further action is shown to have taken place in the matter until the 21st September, 1846, when Houck is declared to be a party interested in the grant, having presented his naturalization papers. Although the departmental assembly positively refused to grant him an interest in the grant, on account of being forbidden by law to hold land in the frontier departments without the previous knowledge of the general government, and although

199 it is contended that at that time Armijo was invested with extra-

ordinary powers, his action in this case was in direct violation of law, and as no consent of the general government is recorded or even contended for, the order of the governor to make him an equal participant, upon the presentation of the necessary document, was null and void, and could not convey to him an interest which the law expressly forbid. After the execution of this document declaring Houck a participant in the grant, made on the 21st day of September, 1846, over one month after the United States took possession of the country, and the laws of the United States extended over it, by the proclamation of the conqueror, General Kearney, upon which so much stress is laid by the claimants, the order requiring the suspension of the construction of the wells, &c., is recorded. By reference to the original document it will be seen that this note or razon immediately follows the declaration in favor of Houck, and as Chacon's resignation was accepted on the 21st day of September, 1846, both must have been made upon the same day. It is true that the laws of Mexico were declared to be in force in the land, except when they conflicted with the Constitution or laws of the United States. In this case there was a conflict; for no other
200 power than the Congress of the United States can alter or suspend the compliance of conditions in regard to the severance of land from the public domain. The order was therefore valueless from want of authority in the officer directing the work to be suspended, and could not relinquish them from the compliance of their obligations.

The testimony of Donaciano Vigil, as well as the letter accepting the resignation of Chacon, show that Juan Bautista Vigil y Alarid was the governor of New Mexico at the time the order is purported to have been issued; and to whom was the order issued? To himself, the principal grantee, and his associate Rivera, which, to say the least, was very inappropriate and indelicate.

Admitting, for a moment, that the governor had the authority to issue such an order, and that it was proper, what were the parties doing from March, when they were placed in possession, until September, when the governor issued the order to himself to suspend any work upon the land?

No evidence has been introduced by the parties that any obstacle was thrown in their way, or that they had undertaken to commence the compliance of the conditions, which were to give them a good title
201 to the land. They do not show that they commenced digging wells, or had taken any steps to erect suitable buildings on the premises, for the establishment of the factories that were to be of so much benefit and utility to the department, nor that they had broken up or planted the land their means allowed them to do. On the contrary, it is shown in evidence that no improvements have been placed upon the land; neither did they attempt any, and the Jornada del Muerto, to which the parties claim a title in fee, is the same, and has been since the grant was made, as it was when Mexico declared her independence—"the dead man's journey."

The fourth point made by the claimants requires but a passing notice. In the adjudication of the private land claims in New Mexico, the government of the United States is expected to act in the same manner as the government of New Mexico would have acted under similar circumstances; to do what that government would do, and no more.

The granting decree of the departmental assembly clearly states that the land is given to them for the purpose of opening wells and cultivating the soil, so far as their means would permit. This is unmistakeably a conditional grant, requiring the petitioners to comply with
202 certain obligations, which, when finished, would entitle them to

the land asked for. The case is parallel to one arising under the donation laws of this Territory, where four years' occupation and cultivation are required to entitle the party to a patent to the land. If this occupation and cultivation does not take place, the land does not become severed from the public domain. The same process of reasoning applies to the case under consideration. As no wells have been dug, no factories established, and no land brought under cultivation, the grant is void.

By reference to the petition filed by the parties, they admit their willingness to concede to any written boundary which may be adjudged to the contending parties, and relinquish all claim to as much as is in dispute.

If that concession is made now, it is reasonable to suppose that they were willing to make it when the claim was first made, and the order of Governor Vigil requiring himself and associates to suspend the work was therefore useless and unnecessary.

This case is deemed to be entirely void of merit, and the land claimed
believed to belong rightfully to the public domain of the United
203 States. It is therefore rejected and ordered to be transmitted to
Congress for its action in the premises.*

WM. PELHAM,
Surveyor General.

SANTA FÉ, NEW MEXICO, *August 29th*, 1859.

* There are other very objectionable points in the case, which it is unnecessary to dwell upon.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.]

A. P. WILBAR,
Surveyor General.

Also, it being admitted by the United States district attorney that Gaspar Ortiz was now in the State of Chihuahua on a trading expedition, the claimants offered in evidence what purported to be a certified copy of his evidence on file before the surveyor general, in the words and figures following, to wit:

JUAN BAUTISTA VIGIL ET AL.

Jornada del Muerto.

GASPAR ORTIZ Y ALARID sworn:

Question. Have you any interest in this case?
204 Answer. I have none.
Question. How old are you?
Answer. I am 34 years old.
Question. What position did you hold under the departmental government of New Mexico when it was in existence?
Answer. I was an officer of the army.
Question. Did you know General Armijo?
Answer. I did. He was commander-in-chief and governor of the department.
Question. Do you know his signature when you see it?
Answer. I do.

Question. Is the signature on folio 3 of the documents (shown to him) Armijo's genuine signature?

Answer. It is his signature and rubric.

Question. Did you know José Albino Chacon, and what position did he hold?

Answer. I did. He was judge of original jurisdiction. Both of the above officers were in office in 1846.

Question. Do you know the signature of Albino Chacon?

Answer. I do. He was writing with me for one year. His signatures on folio 5 & folio 7 are genuine.

Cross-examined by attorney for U. S.:

205 Question. Do you know the Jornada del Muerto?

Answer. I do.

Question. Have you passed over it since 1846; and if so, how often?

Answer. I have passed over it, I believe, 12 times.

Question. Have you ever seen any wells or conveniences for water, or other improvements, put upon any part of the land?

Answer. I have seen none.

Question. Have you ever seen any person in possession of the land embraced within the Ojo del Muerto and Roblero at any time since 1846?

Answer. I have not.

Question. Do you know the Mesa del Contadero and Roblero?

Answer. I do. I believe the distance to be no less than thirty-five leagues.

Question. How far is it from the Rio del Norte to the mountains to the east?

Answer. I believe it to be not less than ten leagues.

GASPAR ORTIZ.

Sworn and subscribed before me this 16th day of June, 1859.

W'M PELHAM,
Sur. Gen'l.

206 Also a paper purporting to be the certified copy of the evidence of D. Vigil, in the words and figures following, to wit:

Jornada del Muerto.

DONACIANO VIGIL sworn:

Question. Have you any interest in this case?

Answer. None.

Question. What position did you hold under the American government in September, 1846?

Answer. On the 22d September I was appointed secretary of the Territory.

Question. What position did you hold under the Mexican government previous to the 18th of August, 1846?

Answer. I was secretary to the military commander, and during that period was several times acting secretary of state.

Question. Did the prefects and other subordinate civil officers hold over under the American government by the sanction of General Kearney until the 22d September of the same year?

Answer. They did.

Question. What office did Juan Bautista Vigil hold during that period?

Answer. He was secretary of state at the time of the arrival of General Kearney. From that time to the 22d September he was acting governor.

207 Question. Do you know the signature of Juan Bautista Vigil y Alarid?

Answer. I do. The signature accepting the resignation of the 1st justice of Santa Fé is genuine.

Question. Did you know Nicolas Quintana, and what was his occupation in February, 1846?

Answer. I did. He was first clerk in the secretary's office. His signature to the order directed to the first justice of Santa Fé is genuine.

Question. What position did José Albino Chacon hold from August 18th to September 22d, 1846?

Answer. He was an acalde, acting as senior judge of the jurisdiction.

Question. Under what sanction did he exercise those functions?

Answer. By virtue of the proclamation of General Kearney continuing in office all the civil employés until competent laws were promulgated.

Question. Do you know Albino Chacon's signature and rubric?

Answer. I do. His signature and rubric on the reverse of folio 7 are genuine.

Question. Under the Spanish and Mexican government would
208 an addition to a legal proceeding, executed by the same officer, and his rubric only attached, be considered as valid, and hold good in law.

Answer. Official proceedings or agreements written immediately after a judicial act were considered to be sufficiently authenticated, and were held good in law, if rubricked only by the proper officer.

Cross-examined by U. S.:

Question. Did officers of the Mexican government, in executing official documents and attaching their signatures thereto, ever place their rubric alone without their names?

Answer. It was the legal practice under the governments of Spain and Mexico, and is the practice up to the present time, that where the two parties were not present, or where only one was present, that the judge or justice taking cognizance of the case, would simply make a memorandum note, affixing his rubric only. This memorandum served as a notice or summons to the absent party.

Question. Did the justices of the peace under the Spanish and Mexican government have the power and authority to alter or amend the acts of the governor in making grants, or suspend the compliance of conditions specified therein?

Answer. They did not.

209 Re-examined by counsel for claimants:

Question. If the justice of the peace in giving judicial possession of lands, granted by due course of law, ascertained, while complying with his duty, that the lands so granted encroached upon lands already granted, in this case did he not have the right to suspend further proceedings in the case until the boundaries in dispute were settled?

Answer. If, while possession was being given, a claim was made

against the grant so made, then all further proceedings were stopped, until information was conveyed to the proper authorities, and the question in dispute was settled. He had the authority to give notice of the suspension until the matter was settled, or state the reasons why he did not comply with the instructions given him in the premises.

D. VIGIL.

Sworn and subscribed before me this 18th day of June, 1859.

WM PELHAM, *Sur. Gen'l.*

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original, on file in this office.

[SEAL.] A. P. WILBAR, *Surveyor General.*

210 Also a paper purporting to be a certified copy of the deposition of Miguel E. Pino, in the words and figures following, to wit:

MIGUEL E. PINO sworn:

Question. Have you any interest in this case?

Answer. None.

Question. What office did you hold under the Mexican government in the year 1846?

Answer. In the month of January I was chief clerk in the secretary's office.

Question. Is your signature, on folio 3 of the document, genuine?

Answer. It is.

Question. Did you know José Manuel Gallegos, and what position did he hold on January 12th, 1846?

Answer. I did. He was a member of the departmental assembly.

Question. Did you know Nicolas Quintana y Rosas, and what office did he hold?

Answer. I did. He was secretary of the assembly.

Question. Are the signatures of the above individuals, on folio 1 & 4, genuine?

Answer. They are. I know them to be such.

Question. Did you know José Chaves, and what was his position in January, 1846?

211 Answer. I did. He was a member of the departmental assembly. He was the senior member, and governor by the ministration of the law. His signature, on folio 4, is genuine.

Question. Did you know Santiago Abreu, and what office did he hold in 1832?

Answer. I did. About that time he was political chief. Teodosio Quintana was his secretary. Their signatures, on folio 8, are genuine.

MIGUEL E. PINO.

Sworn and subscribed before me this 16th day of June, 1859.

WM PELHAM,
Sur. Gen'l.

To the introduction of each of which papers the attorney for the United States objected, and the objection was sustained by the court, and said papers excluded; to which opinion of the court, in sustaining said objections and excluding said papers, the petitioners, by their att'ys, except, and ask that this, their bill of exceptions, may be signed and

sealed by the court, and made a part of the record in this case; which is done accordingly.

(Signed) KIRBY BENEDICT, [SEAL.]
Chief Justice.

On which said bill of exceptions is the following endorsement, to wit:

212 Juan B. Vigil et al. vs. The United States. Bill of exceptions filed in open court this 10th day of January, 1865. Sam'l Ellison, clerk.

This cause was then argued by John S. Watts, esq., on the part of the plaintiffs. Whereupon it was ordered by the court that this court stand adjourned until to-morrow at 10 o'clock a. m.

And be it further remembered that on the 11th day of January, A. D. 1865, being the 9th day of the January, A. D. 1865, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL Y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES. } Original suit.

This day came again the parties by their counsel. Whereupon, on motion of the United States district attorney, this cause is continued until to-morrow at 10 o'clock a. m., for the purpose of giving him time to prepare his argument.

213 And be it remembered that on the 12th day of January, A. D. 1865, the United States district attorney filed in open court the following bill of exceptions in the above entitled cause, which said bill of exceptions is in the words and figures following, to wit:

JUAN B. VIGIL ET AL.
vs.
THE UNITED STATES. } Petition for title to lands.

Be it remembered that on the trial of this cause, the plaintiffs offered in evidence papers marked, (A, No. 2,) and (A, No. 2, folio 4,) of which said papers the following are official translations, to wit:

Seal third, [SEAL,] one dollar.

For the years one thousand eight hundred and forty-four, and one thousand eight hundred and forty-five.

MOST EXCELLENT SIR: The individuals who subscribe this petition, animated by the purest patriotism and a desire to be useful to the society in which they live, making use of the right of petition, and of those with which they are favored by the existing colonization laws of this Mexican republic, to which they have the honor to belong as
214 citizens, and one of them naturalized in the same, with all due respect, present this petition to the most excellent departmental assembly, through your excellency, the object of which is to ask for a grant from said honorable body in the ordinary manner, according to the 5th faculty, part second, mentioned in article 134 of the organic

basis, the land known as the Jornada del Muerto, with the following boundaries: On the northwest the little table land of the Contadero, on the west the Del Norte River, on the south the old site of Doña Ana, and on the east the range of the Sandia Mountains, with its tributaries in that direction. After our petition has been granted, and we are placed in possession of the land, the undersigned solemnly bind themselves, first, to construct two wells at the most central points of the Jornada, with their respective tanks for the relief and aid of travellers, who, up to this time, have suffered incalculable losses of horses, mules, cattle, sheep, and goats, and, what is worse still, many human victims, who have perished for the absolute want of water, which travellers will be certain of obtaining at a very little expense, when said wells are placed in working order; second, with equal solemnity they offer to establish two factories, which will be of utility to the department, and in
215 which such delinquents as may be sentenced by the justices and authorities of the department, to suffer for crime, will be received as the laws and decrees of the honorable assembly now or hereafter may direct in regard to the matter; third, the petitioners bind themselves to have the four requisites, which should belong to modern machinery, completed within the shortest possible period, not exceeding five years, obligating themselves, also, to have two field-pieces and a sufficient number of arms, equal to the number of workmen, to repel the hostile Indians, in case they may revolt, as is now the case. In view of all that has been stated, and for the welfare and benefit of the public, which will result from the works proposed in this petition, we pray and request your excellency to be pleased to transmit this petition through its proper channel, adding thereto a recommendation of the merits of the petition, in order to obtain the acquisition of the land therein referred to. We swear, &c.

SANTA FÉ, *December 28th*, 1845.

The undersigned further request that the grant to the land in the ever memorable Jornada del Muerto be made without injury to any third party who may show a better title, date ut supra.

216 For my patron: (Signed) ANTONIO JOSÉ RIVERA.
(Signed) JUAN BAUTISTA VIGIL Y ALARID.
(Signed) JOSEPH M. HOUCK.
(Signed) JOSÉ ALBINO CHACON.

SANTA FÉ, *January 10th*, 1846.

This petition is referred to the most excellent assembly, in order, that if they consider the offers which, in the form of conditions, the petitioners make, beneficial to the commonwealth, that the land asked for be granted to them, directing that they be placed in legal possession as the law directs. This government omits to recommend the petition to its excellency the honorable departamental assembly, as the nature and circumstances connected therewith, and never herebefore planned, is explained in said petition.

(Signed) ARMIJO,
(Signed) MIGUEL E. PINO, *First Clerk.*

SANTA FÉ, *Jan'y* 10, 1846.

This assembly grants to citizens Antonio José Rivera and Juan Bautista Vigil y Alarid the land asked for at the place known as the Jornada del Muerto, for the purpose of constructing wells and cultivating the land as far as their means will permit, without being entitled to an exclusive right to the pasture, and debarring from any of the

217 privileges of this grant the foreigner Michael Houck, as he is prohibited by article 9th of the laws of March 11th, 1842, from acquiring lands in the frontier departments without the previous consent of the supreme government of the nation.

(Signed) JOSÉ CHAVES.
(Signed) NICOLAS QUINTANA Y ROSAS,
Secretary.

The one purporting to be a petition by plaintiffs to the Mexican governor, Armijo, for the land in question, with the governor's marginal statement thereon, the other a confirmation of the same by the departamental assembly, to the introduction of which the district attorney, on the part of the United States, objected. To the first, on the ground that the governor's record was the proper and primary evidence of his action in this matter, and that the paper produced could not be considered by the court until such record was produced, or its absence satisfactorily accounted for; to the second, for the reason that it is in evidence that the departamental assembly kept a clerk and record of its proceedings, and that no journal of such character has been produced. Other papers, marked "A," No. 2, folios 5, 6, 7, 8, 9, & 10, also Exhibits (H,)
218 and Exhibits No. 9 and 10. The official translations and copies of which said papers, as filed, are in the words and figures following, to wit:

Seal third, [SEAL.] four rials.
Years of 1846 and 1847.

In the city of Santa Fé, capital of the department of New Mexico, on the sixth day of the month of February, one thousand eight hundred and forty-six, I, citizen José Albino Chacon, first justice of the corporation of this city, and judge of original jurisdiction of the central district, stated that by virtue of the superior order of the fourth instant, addressed to me by the secretary of government, and citizens Juan Bautista Vigil y Alarid and Antonio José Rivera, having presented themselves at my office with the decree of the most excellent departamental assembly of the tenth of January last, granting to them the Jornado del Muerto, and confirmed by his excellency the governor, in his superior official order, of the fourth instant, by virtue whereof, I, the aforesaid justice, will proceed to give them the legal personal possession of said land to the aforesaid grantees, on condition that if D. Miguel Houck shall present the record referred to in the superior communication above referred to, he shall be declared as a participant in said land, with the same rights as his associates, as appears by
219 their written petition, and by this decree he so provided, ordered and signed, with attending witnesses. I certify.

(Signed) J. ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

SANTA FÉ, *February 7th*, 1846.

Let a certified copy of the superior order of his excellency the governor, of the fourth instant, be attached to these decrees, as directed therein. I, citizen José Albino Chacon, first justice and judge of original jurisdiction of the district so decreed, acting with attending witnesses.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

OFFICE OF THE SECRETARY OF THE GOVERNMENT.

His excellency the governor directs me to require you, that so soon as the document is presented to you, accrediting the grant made by the most excellent departamental assembly on the 10th of January last, past, to Don Juan Bautista Vigil y Alarid and Don Antonio José Rivera, to the land known as the Jornada del Muerto, from which the naturalized Michael Solomon Houck is excluded, he being a foreigner, who, upon presentation of the proper naturalization papers in that case, be
220 considered as one of the grantees, the same as those above mentioned, whom you will proceed to place in possession of said land, giving them the boundaries called for in their petition, not having been changed by the most excellent assembly, which only restricted the exclusive right & patronage which shall be free to travellers who may go and come over the road, and only to the owners of stock, and shepherds of this and other departments, requiring you also, by order of his excellency, to attach to the granting deed a legal copy of this communication for the protection of the parties interested, and give them more security to undertake the work of opening wells, which will be of great utility to the public, by preventing many losses, and securing not only their lives, but those of their animals, at very little cost. Of all which you are informed by order of his excellency, for its due compliance and execution, acknowledging the receipt hereof.

God and liberty. Santa Fé, February 4th, 1846.

(Signed) NICOLAS QUINTANA,
Acting Secretary.

To the JUSTICE and JUDGE OF ORIGINAL JURISDICTION
Of this capital, Santa Fé.

The above is a true and legal copy of the original, among the papers placed under my charge for record, corrected and compared by me and those in my attendance, with whom I certify appointment. I certify.

(Signed) JOSÉ ALBINO CHACON.

221 Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELERFORO SALAZAR.

In obedience to the foregoing decree, and the above superior order of the fourth of February last past, a legal copy whereof appears above, I have gone backwards and forwards over the land granted to the parties referred to in the same decree of the most excellent assembly; from the practical knowledge I have of the aforesaid land of the Jornada del Muerto, and according to the well received laws, ceremonies, and customs in this department, I proceeded to give them the possession, which in fact and by right they are entitled to, no third parties having a better title having presented themselves up to this time, and no opposition being made to the public land which has been granted in fee to the grantees, Juan Bautista Vigil y Alarid and Antonio José Rivera, who remain in the quiet and peaceful possession of said land, from which, in proof of lawful possession, they have pulled up weeds and grass, throwing stones and crying aloud with joy in honor of the supreme Mexican government, from whose generosity they received said possession of which they acknowledge, and will defend as permanent boundaries the following points: On the north the little table land of the Contadero; on
222 the south the old site of Doña Ana at Roblerito; on the east the range of the Sandia Mountains, and its tributaries on that side; on the west the River del Norte, in which directions the parties will

erect the proper monuments to avoid confusion, with the understanding that if José Miguel Solomon Houck, one of the partners in the company, shall present the proper naturalization papers, he shall be considered as one of the proprietors holding equal rights with Messrs. Vigil and Rivera, being privileged further to admit as associates and partners in said land such persons as they may desire and in whom they may have confidence; and in testimony thereof, and that this document may be to the grantees a deed of possession, I have executed this, which I authorize and sign on the fifteenth day of the month of March, one thousand eight hundred and forty-six, with the parties interested, and my attending witnesses, with whom I act in the absence of a notary. I certify fees for placing in possession 150 dollars.

(Signed) JOSÉ ALBINO CHACON.
(Signed) JUAN BAUTISTA VIGIL Y ALARID.
(Signed) ANTONIO JOSÉ RIVERA.

Attending: (Signed) TELESFORO SALAZAR.
Attending: (Signed) JESUS MARIA TAFOYA.

In the city of Santa Fé, capital of the department of New Mexico,
223 on the sixteenth day of September of this year, one thousand eight hundred and forty-six, I, citizen José Albino Chacon, first justice and judge of original jurisdiction of this capital and its district, stated that Don José Miguel Solomon Houck, having presented his naturalization papers, before the court under my charge, let the original thereof be attached to these granting documents, and therefore the said Houck is to be considered as a participant in, and one of the proprietors of, the above-mentioned land of the Jornada del Muerto, with the same rights as the other partners, Messrs. Juan Buntista Vigil y Alarid and Don Antonio José Ribera, according to the directions of the most excellent assembly, dated the tenth day of January of this year, and the official communication of his excellency the governor of the fourth of February of the same year. I the aforesaid justice so provided, acting with attending witnesses in the known absence of a notary public. I certify.

(Signed) JOSÉ ALBINO CHACON.

Attending: (Signed) JESUS MARIA TAFOYA.
Attending: (Signed) TELESFORO SALAZAR.

NOTE.—Don Manuel Armendaris, resident of the department of Chihuahua, having claimed part of the land contained in this grant
224 on the northern boundary of the little table land of the Contadero, it is ordered, by direction of his excellency the present governor, that the owners and proprietors of the Jornada del Muerto shall not proceed to construct the wells until the suit between Armendaris and the heirs of the late Don Francisco Xavier Chaves shall be decided, and therefore the term of five years limited for the construction of the wells shall be counted from the day on which the said northern boundary shall be established, be it by the said Armendaris, or the heirs of the late Chaves, the other parties to the suit, and in order that it may so appear, I have made this note which I have rubricked.

[RUBRIC.]

Santiago Abreu, political chief of the Territory of New Mexico.

José Miguel Houck, native of the State of Virginia, in the United States of North America, having complied with the conditions and re-

quirements provided by the law of the general Congress of April 14th, 1828, which regulates the manner in which naturalization papers are to be granted to foreigners, and accompanying the documents by which he is identified, I hereby declare the above to be naturalized in the
225 United Mexican States, by virtue of the authority in me vested by said law.

Gratis.

Santa Fé, August 18th, 1832.

(Signed) SANTIAGO ABREU,

(Signed) TEODOCIO QUINTANA,
Secretary.

DEPARTAMENTAL ASSEMBLY OF NEW MEXICO.

The departamental assembly has resolved to return to your excellency the petition of citizens Antonio José Rivera, Juan Bautista Vigil, and the foreigner Miguel Houck, which has been decreed in accordance with the resolution of said assembly. I reiterate to your excellency the protestations of my consideration and esteem. God and liberty.

Santa Fé, January 12th, 1846.

(Signed) JOSÉ MANUEL GALLEGOS,
President.

(Signed) NICOLAS QUINTANA Y ROZAS,
Secretary.

His excellency the GOVERNOR OF THE DEPARTMENT.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct and true copy of the original on file in this office.

[SEAL.] A. P. WILBAR,
Surveyor General.

226 OFFICE OF THE SECRETARY OF THE GOVERNMENT OF THE DEPARTMENT.

His excellency the governor directs me to inform you that so soon as the document is presented to you, accrediting the grant of land made by the most excellent departamental assembly, on the 10th of January last past, to Don Juan Bautista Vigil y Alarid and Don Antonio José Ribera, at the point known as the Jornada del Muerto, and from which grant the naturalized citizen Miguel Solomon Houck was excluded, being considered as a foreigner, which individual, if he presents the proper naturalization papers in that case he shall be considered as one of the grantees equally with the other two persons above mentioned, whom you will proceed to place in possession of said land, marking out to them the boundaries which they set forth in their petition, as they have not been changed by the most excellent assembly, who only restricted the exclusive right to partners, which are declared to be common to travelers going and coming over the road, and not to owners of stock in this and other departments, requiring them also by direction of his excellency to attach to the granting deed a certified copy of this communication for the protection of the parties interested, and that they may with greater security undertake the work of opening wells which will be of great utility
227 to *to* the public, thereby preventing many losses, and saving their lives at very little expense.

Of all which you are informed by order of his excellency for its due compliance and execution, acknowledging the receipt hereof.

God and liberty. Santa Fé, February 14th, 1846.

(Signed) NICOLAS QUINTANA,
Prosecretary.

To the JUSTICE OF THE PEACE AND JUDGE OF THE FIRST INSTANCE *of this Capital, Santa Fé.*

SURVEYOR GENERAL'S OFFICE,
Translator's Department, Santa Fé, New Mexico, August 29, 1859.

The above is a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

I certify that the foregoing is a correct copy of the original on file in this office.

[SEAL.] A. P. WILBAR,
Surveyor General.

SUPERIOR GOVERNMENT OF THE DEPARTMENT.

Considering the reasons given in your note of the 11th instant,
228 as just, sufficient, and legal for resigning the office of first individual of the corporation of this city, the government making use of the faculties conferred upon it by article 3d, fraction 12, of the regulatory law of March 20th, 1837, I have accepted your resignation, which you will transmit to the honorable prefect, in order that the alderman whose turn it is may assume the duties of second justice, who will assume those of first justice, which you obtained by election.

God and liberty. Santa Fé, September 3d, 1846.

(Signed) JUAN BAUTISTA VIGIL Y ALARID.
(Signed) JESUS MARIA TAFOYA,
First Clerk.

To the FIRST JUSTICE *of Santa Fé.*

On the 21st September it was transmitted to the prefect.

SURVEYOR GENERAL'S OFFICE,
Translator's Department, Santa Fé, New Mexico, July 10th, 1859.

The above is a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

SURVEYOR GENERAL'S OFFICE,
October 20th, 1860.

I certify that the foregoing is a correct copy of the original paper on file in this office.

229 [SEAL.] A. P. WILBAR,
Surveyor General.

(No. 10.)

JUAN BAUTISTA VIGIL ET AL.
vs.
THE UNITED STATES.

This case came on to be heard on the 16th July, and continued until the 18th July, when it was finally submitted by counsel.

On the 28th day of December, 1845, Antonio José Rivera, for his patron, Juan Bautista Vigil y Alarid, and José Miguel Houck, petitioned the governor of the department of New Mexico for a tract of land known as the Jornada del Muerto, with the boundaries therein set forth, solemnly binding themselves upon receiving the grant, and being placed in possession of the land, to commence the construction of two wells at the most central points on the Jornada for the purpose of supplying water to travelers and stock; and also to establish two factories of utility to the department. These factories were to be supplied with modern improved machinery, and the whole to be concluded within five years. They were also to have two cannons and a sufficient number of fire-arms to repel any attack from hostile Indians.

230 On the 10th day of January, 1846, Manuel Armijo, the governor of the department, referred the petition to the departamental assembly, recommending that the grant be made if the propositions made by the applicants in the form of conditions were deemed to be of sufficient benefit to the country, and calling their attention to the matter of those conditions, which, at that time, was a novel undertaking in the department. On the same day the departamental assembly granted the land known as the Jornada del Muerto to Antonio José Rivera and Juan Bautista Vigil y Alarid for the purpose of opening wells and cultivating as much land as their means would allow, excluding Michael Houck from any participation in the grant on account of the prohibition contained in article 9th of the law of March 11th, 1842, which forbids foreigners from acquiring lands in the frontier departments without the previous knowledge of the supreme government.

On the 4th day of February, 1846, Nicolas Quintana, acting secretary, by declaration of the governor, orders the justice of the peace of Santa Fé to place the parties in possession of the land, and also directs an equal interest to be given to Houck upon the presentation of his naturalization papers.

231 On the 15th day of March, 1846, José Albino Chacon, first justice of Santa Fé, certifies that the placed Antonio José Rivera and Juan Bautista Vigil in possession of the land granted to them.

On the 16th day of September, 1846, the same José Albino Chacon declares José Miguel Solomon Houck as a party to said grant, he having filed the required naturalization papers.

Immediately after this statement, made after the sovereignty of the country had changed, there appears a memorandum or note, without any written signature, but merely a rubric, to the effect that as Manuel Armendaris, a resident of the department of Chihuahua, claimed a portion of the land embraced within the grant of the Jornada del Muerto, the grantees forbidden to prosecute the work until a certain suit pending between the said Armendaris and the heirs of Francisco Xabier Chaves should be decided, and the period of five years given for the conclusion of the work was to commence from the time of the termination of said suit by which the northern boundary would be determined.

Immediately thereafter follows the original certificate of naturaliza-

tion, declaring José Miguel Houck a citizen of the Republic of
232 Mexico.

The parties also file the original letter from José Manuel Gallegos, the president of the departamental assembly, returning the petition of the grantees, with the action had thereon.

The original order to Albino Chacon, directing him to place the parties in possession, is also filed, as well as the acceptation of the resignation of Albino Chacon, by Juan Bautista Vigil y Alarid, acting governor, on the 21st September, 1846. An agreement is also filed, dated May 3d, 1859, between Juan Bautista Vigil y Alarid and associates of the first part, and Albino Chacon of the second part, by which a one-fourth interest is conveyed to the said Albino Chacon in consideration of the services rendered by him in placing the parties in possession of the grant.

A certified copy of the proclamation of Brig. Gen'l S. W. Kearney to the people of New Mexico, upon taking possession of the country in the name of the United States, on the 18th August, 1846, also accompanies the papers in the case.

The name of José Alvino Chacon appears signed to the original petition asking for the grant; but as his name does not appear in the granting decree, and as he was directed to place the parties in possession, which would not have been done were he an interested party,
233 it is believed he attached his name thereto at a very recent date, being after the transactions in the case took place, and it has so been admitted by one of the parties.

The papers acted upon are the originals filed by the claimants.

This is one of the most important cases that have been filed in this office for adjudication, embracing as it does an area of nearly two and one-half millions of acres of land, a large portion of which has been subdivided and is now ready to be brought into market, and has received my most careful attention and close examination.

The parties claim a confirmation of their grant for the following reasons:

First. On account of the originality and genuineness of the documents.

Second. That the grant was made in due accordance with the laws and customs in force at that time.

Third. That the parties were forbidden from taking any further steps towards the construction of the wells and the establishment of the factories, until a certain suit between Pedro Armendaris and the heirs of Francisco Xavier Chaves should be decided, and by which the northern boundary of the grant in question would be determined.

234 Fourth. That the non-compliance of the conditions of the grant under the late government does not forfeit their rights under the government of the United States.

It is not necessary to dwell on the first and second points submitted in the brief of the claimants, as the originality and genuineness of the documents not questioned, and is fully proven in evidence.

The petition made by the parties asking for the grant solemnly bind themselves, upon being placed in possession of the land, to commence the construction of wells and the establishment of certain factories. This possession, as will be seen by the certificate of the justice, was given on the 13th day of March, 1846, and no further action is shown to have taken place in the matter until the 21st September, 1846, when Houck is declared to be a party interested in the grant, having presented his naturalization papers, although the departamental assembly positively

refuse to grant him an interest in the grant, on account of being forbidden by law to hold land in the frontier departments without the previous knowledge of the general government; and although it is contended that at that time Armijo was invested with extraordinary
235 powers, his action in this case was in direct violation of law; and as no consent of the general government is recorded, or even contended for, the order of the governor to make him an equal participant, upon the presentation of the necessary document, was null and void, and could not convey to him an interest which the law expressly forbid. After the execution of this document declaring Houck a participant in the grant, made on the 21st day of September, 1846, over one month after the United States took possession of the country, and the laws of the United States extended over it by the proclamation of the conqueror, General Kearney, upon which so much stress is laid by the claimants, the order requiring the suspension of the construction of the wells, &c., is recorded. By reference to the original document, it will be seen that this note, or razon, immediately follows the declaration in favor of Houck; and as Chacon's resignation was accepted on the 21st day of September, 1846, both must have been made on the same day. It is true that the laws of Mexico were declared to be in force in the land, except when they conflicted with the Constitution or laws of the United States. In this case there was a conflict for no other power than the Congress of the United States can alter or suspend the com-
236 pliance of conditions in regard to the severance of land from the public domain. The order was therefore valueless from want of authority in the officer directing the work to be suspended, and could not relinquish them from the compliance of their obligations.

The testimony of Donaciano Vigil, as well as the letter accepting the resignation of Chacon, show that Juan Bautista Vigil y Alarid was the governor of New Mexico at the time the order is purported to have been issued; and to whom was the order issued? To himself, the principal grantee, and his associate, Rivera, which, to say the least, was very inappropriate and indelicate.

Admitting for a moment that the governor had the authority to issue such an order, and that it was proper, what were the parties doing from March, when they were placed in possession, until September, when the governor issued the order to himself to suspend any work upon the land? No evidence has been introduced by the parties that any obstacle was thrown in their way, or that they had undertaken to commence the compliance of the conditions which were to give them a good title to the land. They do not show that they commenced digging wells, or had taken any steps to erect suitable buildings on the premises for the establishment of the factories, that were to be of so much benefit
237 and utility to the department; nor that they had broken up or planted the land their means allowed them to do. On the contrary, it is shown in evidence that no improvements have been placed upon the land, neither did they attempt any, and the Jornada del Muerto, to which the parties claim a title in fee, is the same, and has been since the grant was made, as it was when Mexico declared her independence—"the dead man's journey."

The fourth point made by the claimants requires but a passing notice. In the adjudication of the private land claims in New Mexico, the government of the United States is expected to act in the same manner as the government of New Mexico would have acted under similar circumstances; to do what that government would do, and no more.

The granting decree of the departamental assembly clearly states that

the land is given to them for the purpose of opening wells, and cultivating the soil as far as their means would permit. This is unmistakeably a conditional grant requiring the petitioners to comply with certain obligations, which, when finished, would entitle them to the land asked for. The case is parallel to one arising under the donation laws of this Territory; when four year's occupation and cultivation does not take place, the land does not become severed from the public domain.

238 The same process of reasoning applies to the case under consideration. As no wells have been dug, no factories established, and no land brought under cultivation, the grant is void.

By reference to the petition filed by the parties, they admit their willingness to concede to any written boundary which may be adjudged to the contending parties, and relinquish all claim to as much as is in dispute.

If that concession is made now, it is reasonable to suppose that they were willing to make it when the claim was first made; and the order of Governor Vigil, requiring himself and associates to suspend the work, was therefore useless and unnecessary.

This case is deemed to be entirely void of merit, and the land claimed believed to belong rightfully to the public domain of the United States. It is therefore rejected, and ordered to be transmitted to Congress for its action in the premises.*

WM PELHAM, *Surveyor General.*

SANTA FÉ, NEW MEXICO, *August 29th*, 1859.

*There are other very objectionable points in the case, which it is unnecessary to dwell upon.

SURVEYOR GENERAL'S OFFICE,
New Mexico, October 20th, 1860.

239 I certify that the foregoing is a correct copy of the original, on file in this office.

[SEAL.] A. P. WILBAR, *Surveyor General.*

I, Gregorio Ortiz, acting sub-collector of New Mexico, do hereby certify, that at the date hereof there is not in the office under my charge any paper of seal 2d. July 12th, 1845.

GREGORIO ORTIZ.

MOST EXCELLENT SIR: The committee appointed to report upon the petition of the citizens Juan Bautista Vigil y Alarid, Antonio José Rivera, and José Miguel Houck, praying a grant be made to them to the so-called Jornada del Muerto, designating the boundaries thereof, as set forth by said applicants in their petition of the 28th of December, 1845, last past, and remitted to your excellency for the government of this department, in order that your excellency, "should you, from the propositions which as conditions are expressed in the petition of said applicant, consider beneficial to the commonwealth to grant unto them the land solicited." The committee having gave the conditions, inconsiderately made by the applicants, due consideration, and deeming them to be extravagant, expensive, and dangerous, for the reason that the lands asked for are situated in the center and common retreats of the

240 Apache tribes, called the Mescaleros, Miembreños, Coyoteros, and Jileños, which are always joined by the Carrisaleños, Agua Nuevos, Teburseños, and Norteños, &c.; and the committee believing that the danger from the Indian incursions, who are now at war, and never at peace in good faith, will prevent the applicants from deriving any bene-

fit from the grant to the Jornada del Muerto. The committee therefore recommend that your excellency tacitly reject such wild and almost impracticable conditions, which cannot nor will not be complied with; and the committee are of opinion that the scheme will only tend to compromise the parties.

The committee would state, that in their opinion the foreigner Houck should be excluded from any participation in the said grant, as provided in article 9th of the law of the 11th of March, 1842, which should be cited in the decree, and that the Mexican citizens, Juan Bautista Vigil y Alarid and Antonio José Ribera, only are entitled to receive the title to the grant to the land known as the Jornada del Muerto, with the privilege to admit such other associates in the company as they may esteem best, in the use of said land known as the Jornada del Muerto.

The committee would recommend that your excellency grant to
241 the applicants, (should this report merit approval,) Juan Bautista Vigil y Alarid and Antonio José Rivera, the said land on the most simple terms; and without referring in the concession to any of the conditions mentioned by the applicants in their petition of the 28th of December last past, the decree of concession containing as the only condition in the opinion of this committee of to-day's session, as follows, which is respectfully submitted to your excellency for your deliberation and examination:

SANTA FÉ, *January 10th*, 1846.

"That this assembly grants to the citizens José Antonio Rivera and Juan Bautista Vigil y Alarid the land asked for at the point known as the Jornada del Muerto, for the purpose of opening wells and planting the lands as far as their means will permit, without an exclusive right of pasture, and that the foreigner, Miguel Houck, shall not have any interest whatever in this grant, for the reason that Article 9th of the law of the 11th of March, 1842, prohibits him from acquiring lands in the frontier departments without the previous consent of the supreme government of the nation."

Committee room of the departamental assembly of New Mexico, January 10th, 1846.

J. MANUEL GALLEGOS.
FELIPE SENA.
TOMAS ORTIZ.

Presented to the house of this day's session and the report is
242 approved without addition or amendment.

Copy of the original, Santa Fé, July 12, 1846.

FELIPE SENA,
Secretary of the Committee.

Were also offered by plaintiffs and objected to by the district attorney, on the ground that they were not sustained by proper evidence, and alone would not constitute a title. The objections were overruled by the court, and all said papers were admitted as evidence.

To the opinion of the court in overruling said objections and admitting said papers as testimony the district attorney excepts, and prays that this his bill of exceptions may be signed, sealed, and made a part of the record, which is done accordingly.

(Signed) KIRBY BENEDICT, [SEAL.]
Chief Justice.

On which said bill of exceptions is the following endorsement, to wit: Vigil & others vs. The United States. Petition for title to lands.

Bill of exceptions. Filed in open court this 12th day of January, 1865. Sam'l Ellison, clerk.

243 And be it further remembered that on the 12th day of January, A. D. 1865, being the 10th day of the January, A. D. 1865, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES.
} Original suit.

This day came again the parties by their counsel, and this cause was argued on the part of the United States by Theodore D. Wheaton, esq., United States district attorney, and on the part of the plaintiffs by Joab Houghton, esqr. Whereupon the parties by their counsel announced the arguments of this cause closed, and submit the case to the court for its judgment.

And be it further remembered that on the 13th day of January, A. D. 1865, being the 11th day of the January, A. D. 1865, term of the said supreme court of the Territory of New Mexico, the following pro-
244 ceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN BAUTISTA VIGIL y ALARID, ANTONIO José Rivera, and José Miguel Houck
vs.
THE UNITED STATES.
} Original suit.

This day came again the parties by their counsel, and this case having been submitted for the judgment of the court upon yesterday, and the court not being sufficiently advised as to the judgment or decree it should render herein, takes this cause under advisement until the next term of this court.

It is ordered that Samuel Ellison, translator for this court, duly certify to the correctness of the translations by him made and to be made of the Spanish papers and documents in evidence in this cause, as translator by authority of this court, and that he be allowed reasonable charges for making such translations.

And be it further remembered that on the 19th day of January, A. D. 1865, the following translations of Exhibits "A" and accompanying papers, and "H" in this cause, were filed, which said translations are in the words and figures following, to wit:

245 Supreme court, January term, 1865.—Translations made by order of the court by Samuel Ellison.

Petition.—Translation.

Third seal, [SEAL] one dollar.

For the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MOST EXCELLENT SIR: The individuals who subscribe this petition,

prompted by the purest patriotism and a desire to be useful to the society in which they live, availing themselves of the right of petition, and of those extended to them by the colonization laws of this Mexican republic now in force, to which they have the honor to belong as citizens, and one of them naturalized in the same, with all due respect present this petition to the most excellent departamental assembly, through your excellency, the object of which is to ask for a grant from said honorable body, in the ordinary manner, according to the fifth faculty, part second, mentioned in Article 134 of the organic basis, the land known as the Jornada del Muerto, with the following boundaries: On the northwest the little table land of the Contadero; on the west by the
246 river Del Norte; on the south by the old site of Doña Ana; and on the east by the range of the Sandia Mountain, and its tributaries in said direction. After our petition shall have been granted and we shall be placed in possession of said lands, the undersigned solemnly bind themselves—First. To construct two wells at the most central points of the Jornada for the relief and aid of travellers, who up to this time have suffered incalculable losses of horses, mules, cattle, sheep, and goats, and, what is still worse, many human victims, who have perished for the absolute want of water, which travellers will be certain of obtaining at a very little expense when said wells are put in working order. Second. With equal solemnity, they offer to establish two factories, which will be of utility to the department and in which such delinquents as may be sentenced by the justices and authorities of the department to suffer for crimes will be received, as the laws and decrees of the honorable assembly, now or hereafter, may direct in regard to the matter. Third. The petitioners bind themselves to have the four requisites which should belong to modern machinery completed within the shortest pos-
sible time, not exceeding five years; obligating themselves also to
247 have two field-pieces and a sufficient number of arms equal to the number of workmen to repel the hostile Indians, in case they should revolt, as is now the case. In view of all that has been stated, and the welfare and benefit to the public, which must, from the works proposed in this petition, result, we ask and request your excellency to be pleased to transmit this petition through the proper channels, adding thereto a recommendation of the merits of the petition, in order to obtain the acquisition of the land therein referred to. We swear, &c.

SANTA FÉ, *December 28th*, 1845.

Furthermore, (otoose,) the undersigned further request that the grant to the land in the ever-memorable Jornada del Muerto be made without injury to any third party who has a better title, date ut supra.

For my patron: ANTONIO JOSÉ RIVERA.
JUAN BAUTISTA VIGIL Y ALARID.
JOSÉ MIGUEL HOUCK.
JOSÉ ALBINO CHACON.

SANTA FÉ, *January 10th*, 1846.

Let this petition be referred to the most excellent assembly, in order that, if they consider the offers, which in the form of conditions the petitioners make, beneficial to the commonwealth, the land asked
248 for be granted to them, directing that they be placed in possession thereof, as the law directs. This government omits to recommend the petition to its excellency the departmental assembly, as the circum-

stances connected therewith, and never before projected, is explained in said petition.

ARMIJO.
MIGUEL E. PINO,
First Official.

Report of the committee of the departmental assembly.

I, Gregorio Ortiz, acting sub-collector of New Mexico, do hereby certify that at the date hereof there is not in the office under my charge any paper of seal 2nd, July 12th, 1845.

GREGORIO ORTIZ.

MOST EXCELLENT SIR: The committee appointed to report upon the petition of the citizens Juan Bautista Vigil y Alarid, Antonio José Rivera, and José Miguel Houck, praying a grant be made to them to the so-called Jornada del Muerto, designating the boundaries thereof as set forth by said applicants in their petition of the 28th of December, 1845, last past, and remitted to your excellency for the government of this department, in order that your excellency "should you from the
249 propositions which, as conditions, are expressed in the petition of said applicants, consider beneficial to the commonwealth, to grant unto them the land solicited." The committee having gave the conditions, inconsiderately made by the applicants, due consideration, and deeming them to be extravagant, expensive, and dangerous, for the reason that the lands asked for are situated in the center and common retreats of the Apache tribes called the Mezcaleros, Miembreños, Coyoteros, and Jileños, which are always joined by the Carrisaleños, Aguas Nuevos, Terburseños, and Norteños, &c., and the committee believing that the danger from the Indian incursions, who are now at war, and never at peace, will prevent the applicants from deriving any benefit from the grant to the Jornada del Muerto, the committee therefore recommend that your excellency tacitly reject such wild and almost impracticable conditions, which cannot nor will not be complied with, and the committee are of the opinion that the scheme will only tend to compromise the parties.

The committee would state that in their opinion the foreigner, Houck, should be excluded from any participation in the said grant, as provided in article 9th of the law of the 11th of March, 1842, which should
250 be cited in the decree, and that the Mexican citizens Juan Bautista Vigil y Alarid and Antonio José Rivera only are entitled to receive the title to the grant to the land known as the Jornada del Muerto, with the privilege to admit such other associates in the company as they may esteem best, in the use of said land known as the Jornada del Muerto.

The committee would recommend that your excellency grant to the applicants, (should this report merit approval,) Juan Bautista Vigil y Alarid and Antonio José Rivera, the said land on the most simple terms, and without referring in the concession to any of the conditions mentioned by the applicants in their petition of the 28th of December, last past, the decree of concession containing as the only condition in the opinion of this committee of to-day's session, as follows, which is respectfully submitted to your excellency for your deliberation and examination:

SANTA FÉ, *January* 10*th*, 1846.

"That this assembly grants to the citizens José Antonio Rivera and Juan Bautista Vigil y Alarid the land asked for at the point known as

the Jornada del Muerto, for the purpose of opening wells, and planting the lands as far as their means will admit, without an exclusive right of pasture; and that the foreigner Miguel Houck shall not have any interest whatever in this grant, for the reason that article 9th of the law of the 11th of March, 1842, prohibits him from acquiring lands in
251 the frontier departments without the previous consent of the supreme government of the nation."

Committee-room of the departmental assembly of New Mexico, January 10th, 1846.

J. MANUEL GALLEGOS.
FELIPE SENA.
TOMAS ORTIZ.

Presented to the house of this day's session, and the report is approved without addition or amendment.

Copy of the original.

Santa Fé, July 12th, 1846.

FELIPE SENA,
Secretary of the Committee.

DEPARTMENTAL ASSEMBLY OF NEW MEXICO.

The departmental assembly has resolved to return to your excellency the petition of the citizens Antonio José Rivera, Juan Bautista Vigil y Alarid, and the foreigner Miguel Houck, which has been concurred in, in conformity with the resolution of the said committee.

I reiterate to your excellency the protestation of my consideration and esteem.

God and liberty. Santa Fé, January 12th, 1846.

J. MAN'L GALLEGOS.
NICOLAS QUINTANA Y ROSAS,
Secretary.

To his Excellency the GOVERNOR OF THE DEPARTMENT.

252 *Decree of the assembly.*

SANTA FÉ, *January 10th*, 1846.

That there be granted by this assembly to the citizens José Antonio Rivera and Juan Bautista Vigil y Alarid the land asked for at the point known as the Jornada del Muerto, for the purposes of opening wells and planting as far as they are able, without an exclusive right of pasture; and that the foreigner Miguel Houck be excluded from any participation in this grant, for the reason that article 9th of the law of the 11th of March, 1842, prohibits him from acquiring lands in the frontier department without the previous consent of the supreme government of the nation."

JOSÉ CHAVES.
NICOLAS QUINTANA Y ROSAS,
Secretary.

SECRETARY'S OFFICE OF THE GOVERNMENT OF THE DEPARTMENT.

I am directed by his excellency the governor to advise you that as soon as the document approving the grant made by the most excellent departmental assembly on the 10th of January, last past, to Don Juan Bautista Vigil y Alarid and Don Antonio José Rivera, to the land known as the Jornada del Muerto, shall be presented to you, from which

253 grant the naturalized Miguel Solomon Houck is excluded, he being considered a foreigner; but upon his presenting the proper naturalization papers he shall be considered as one of the grantees, together with the two above mentioned, whom you will proceed to place in possession of said lands, with the boundaries as designated in their petition, as the most excellent assembly did not alter them, and restricted only the exclusive right of pasture, which shall be free to travellers who shall go and come over the road, but not to owners of stock and shepherds of this or other departments.

Advising you also, by order of his excellency, to attach to the deed of concession a duly-certified copy of this communication for the protection of the parties interested, and give them great security in the work of opening wells, which will be of great utility to the public, by preventing losses and saving the lives not only of individuals but those of animals at very little cost. Of all which you are informed by order of his excellency for the due compliance and execution thereof. You will acknowledge the receipt hereof.

God and liberty. Santa Fé, February 4th, 1846.

NICOLAS QUINTANA,
Acting Secretary.

To the JUSTICE and JUDGE of ORIGINAL JURISDICTION,
of this Capital, Santa Fé.

254 The above is a true copy taken from the original among the papers on file in my office for record and reference by me and those of my attendance, with whom I act by appointment. To which I certify.

JOSÉ ALBINO CHACON.

Attending:
JESUS MARIA TAFOYA.
TELESFORO SALAZAR.

Seal third, [SEAL,] four rials.

For the years one thousand eight hundred and forty-six and one thousand eight hundred and forty-seven.

In the city of Santa Fé, capital of the department of New Mexico, on the 6th day of the month of February, one thousand eight hundred and forty-six, I, the citizen José Albino Chacon, first justice of the corporation of this city and judge of original jurisdiction of the central district, said that, by virtue of the superior order of the 4th instant, addressed to me from the secretary's office of the government, and the citizens Juan Bautista Vigil y Alarid and Antonio José Rivera having presented themselves at this office with the decree of concession of the most excellent departmental assembly of the 10th of January last past, granting them the land in the Jonada del Muerto, which is confirmed by
255 his excellency in his superior order of the 4th instant, by virtue whereof I, the said justice, will proceed to give the legal personal possession of said land to the two aforesaid grantees, and if Miguel Houck shall present the proof required in the superior communication above referred to he shall be declared as a participant in said land, with the same rights as his associates, in conformity with their written petition, which I hereby decree, command, and sign, with attending witnesses. To which I certify.

J. ALBINO CHACON.

Attending:
JESUS MARIA TAFOYA.
TELESFORO SALAZAR.

SANTA FÉ, *February 7th*, 1846.

Let a certified copy of the superior order of his excellency the governor, of the 4th instant, be attached to these decrees as therein directed. Thus, I, the citizen José Albino Chacon, first justice and judge of original jurisdiction of the central district and of the treasury of the department, acting with attending witnesses. To which I certify.

J. ALBINO CHACON.

Attending:
JESUS MARIA TAFOYA.
TELESFORO SALAZAR.

256 In obedience to the foregoing decree and the above superior order of the 4th of February last past, a legal copy whereof appears above, I have gone backwards and forwards over the land granted to the parties referred to in the same decree of the most excellent assembly, and from the practical knowledge I have of the aforesaid Jornada del Muerto, and according to the well received laws, ceremonies, and customs in this department, I have proceeded to give them the possession which in fact and by right they are entitled to, no third party having a better title having appeared up to this time, and no opposition being made to the granting of said public lands to the said grantees, Juan Bautista Vigil y Alarid and Antonio José Rivera, who remain in peaceable and quiet possession of said land, of which, in proof of the lawful possession, they have pulled up herbs, grass, throwing stones, and crying aloud with joy in praise of the supreme Mexican government, from whose benignity they receive said possession; which shall be known and maintained as the fixed boundaries the following points: on the north the little table land of the Contadero, on the south the old site of Doña Ana at Roblerito, on the east the range of the Sandia Mountain and its tributaries, and on the west the River Del Norte, in which directions the parties will
257 erect the proper monuments to avoid confusion, with the understanding that if the associate in the company, José Miguel Houck, shall present the proper naturalization papers he shall be considered as one of the proprietors holding equal rights with Messrs. Vigil and Rivera, with further power to admit or not as associates and partners in said land such person or persons as they may think proper and may merit their confidence.

In testimony whereof, and in order that this document may serve the grantees as a deed of possession, I execute this, which I authorize, and sign the same this fifteenth day of the month of March, one thousand eight hundred and forty-six, with the parties interested and my attending witnesses, who attested my acts in the absence of a notary. To which I certify.

Fees of possession, $150 00.

J. ALBINO CHACON.
JUAN BAUTISTA VIGIL Y ALARID.
ANT'O JOSÉ RIVERA.

Attending:
JORZE RAMIREZ,
JESUS MARIA TAFOYA.

This title is recorded in book "C," pages 13, 14, and 15, in my office. In testimony whereof I hereunto set my hand and seal at Santa Fé, February 15th, 1849.

DONACIANO VIGIL,
Recorder of Land Titles of the Territory of New Mexico.

258 In the city of Santa Fé, capital of the department of New Mexico, on the sixteenth day of September of this year one thousand eight hundred and forty-six, I, the citizen José Albino Chacon, first justice and judge of original jurisdiction of this capital and its districts, said, that in virtue of Don José Miguel Solomon Houck having presented in the office under my charge his naturalization papers, let the original be attached to these documents of donation, and, therefore, the said Houck is to be considered a participant and one of the proprietors in the above-mentioned land of the Jornada del Muerto with the same rights as the other partners, D. Juan Bautista Vigil y Alvarid and D. Antonio José Rivera, according to the directions of the most excellent assembly, dated the tenth day of January of this year, and the official communication of his excellency the governor of the fourth of February of the same year, I the aforesaid justice thus direct, acting with attending witnesses in the notorious absence of a notary public. To which I certify.

J. ALBINO CHACON.

Attending:
JESUS MARIA TAFOYA.
TELESFERO SALAZAR.

NOTE.—Don Miguel Almendaris, resident of the department of
259 Chihuahua, having claimed part of the land contained in this grant on the northern boundary thereof, at the little table land of the Contadero, it is ordered, by direction of his excellency the present governor, that the owners and proprietors of the Jornada del Muerto shall not proceed to construct the wells until the suit between the said Almendaris and the heirs of the late Don Francisco Xavier Chaves shall be decided, and, therefore, the term of five years, limited for the construction of the wells, shall be counted from the day on which the said northern boundary shall be established, either by the said Almendaris or the heirs of the late Chaves, the other parties to the suit, and in order that it may so appear I have made this note, which I have subscribed.

[RUBRIC.]

Santiago Abrew, political chief of this Territory of New Mexico.

SUPREME GOVERNMENT OF DEPARTMENT.

Deeming the reasons you assign in your note of the 19th instant for resigning the office of first individual of the corporation of this city as just, sufficient, and legal, the government, in the exercise of the powers conferred upon it by article 3d, fraction 12th, of the regulatory
260 law of March 20th, 1837, I have accepted your resignation, which you will transmit to the honorable prefect, in order that the alderman whose term it is to receive the staff may assume the duties of 2d justice, who will assume those of the first justice, which you obtained by election.

God and liberty. Santa Fé, September 21st, 1846.

JUAN BAUTISTA VIGIL Y ALARID.
JESUS MARIA TAFOYA, *First Official.*

To the FIRST JUSTICE *of Santa Fé.*

Transmitted to the prefect on the 21st of September.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, Samuel Ellison, being duly appointed and sworn translator to this court, do hereby certify that the above and foregoing is a true and correct

translation of documents marked Exhibits "A" and "H," offered in evidence on the trial of the case of Juan Bautista Vigil y Alarid, Antonio José Rivera, and José Miguel Houck against the United States, made to the best of my ability.

Santa Fé, Jan'y 19th, 1865.

SAM'L ELLISON, *Translator.*

On which said translations are the following endorsements, to wit:

261 Juan B. Vigil y Alarid et als. vs. The United States. Translations of Exhibits "A" & "H." Filed in my office this 19th day of Jan'y, 1865. Sam'l Ellison, clerk.

And be it further remembered, that on the 24th day of February, A. D. 1866, being the 22d day of the January, A. D. 1866, term of the said supreme court for the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

Ordered, That all causes, motions, or proceedings in this court, which have not been finally disposed of or determined by the court, be continued until the next annual term.

And be it further remembered that on the 10th day of January, A. D. 1867, being the fourth day of the January, A. D. 1867, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN VIGIL & OTHERS
vs.
THE UNITED STATES. } Original suit.

262 Now appeared in open court Theodore D. Wheaton, esq., United States district attorney, and suggested the death of Juan Vigil, whereupon his heirs, Juana Maria Vigil, Inez Vigil, and Juan Vigil, were made parties complainants to this suit.

And be it further remembered that on the 14th day of January, A. D. 1867, being the 7th day of the January, A. D. 1867, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN VIGIL & OTHERS
vs.
THE UNITED STATES.

This cause was submitted to the court without argument.

And be it further remembered that on the 25th day of January, A. D. 1867, being the 17th day of the January, A. D. 1867, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

263 THE LEGAL REPRESENTATIVES OF JUAN B. Vigil, deceased, Antonio José Rivera, & Miguel Houck
vs.
THE UNITED STATES. } Petition for confirmation of Mexican land grant.

This cause came on to be heard upon the petition, answer, exhibits,

and testimony upon a former day of the present term of this court, and the same having been submitted upon the manuscript arguments and briefs of the counsel, on the part of both plaintiffs and defendants, and without oral arguments, and the court being fully advised in the premises:

It is ordered, adjudged, and decreed, that all of the land within the boundaries specified in the original grant by the departmental assembly of New Mexico on the 10th day of January, A. D. 1846, in favor of the plaintiffs in this suit, except such portions of said land as are contained within the limits of certain Spanish grants made to Pedro Armendaris, and confirmed to said Pedro Armendaris and his legal representatives by act of Congress approved June 21st, A. D. 1860, be confirmed to the legal representatives of Juan Bautista Vigil y Alarid, deceased, Antonio José Rivera, and Miguel Houck.

264 This decree shall not be so construed as to affect the rights of persons not parties to this suit.

At the costs of the defendants.

And be it further remembered that on the 27th day of January, A. D. 1869, being the 20th day of the January, A. D. 1869, term of said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN B. VIGIL ET AL. } Supreme court, New Mexico, Jan'y term, A.
vs. } D. 1869.
THE UNITED STATES. }

Defendants, by S. B. Elkins, their att'y, move the court that an appeal in the above entitled cause to the Supreme Court of the United States be entered of record nunc pro tunc, and which said motion is in the words and figures following, to wit:

JUAN B. VIGIL ET ALS. } Supreme court, New Mexico, Jan'y term, A.
vs. } D. 1869.
THE UNITED STATES. }

Defendants, by S. B. Elkins, their att'y, move the court that an appeal in the above entitled cause to the Supreme Court of the
265 United States be entered of record nunc pro tunc, for the following reasons:

1st. At the Jan'y term, A. D. 1867, when said cause was heard and determined, an appeal was asked for by the United States attorney and granted by the court.

2d. The clerk of the supreme court failed at said term of the court to make any entry showing either that the appeal was asked for or granted by said court.

And for other good and sufficient reasons.

S. B. ELKINS, *U. S. Dist. Att'y.*

On which said motion is the following endorsement, to wit:

Juan B. Vigil et als. vs. The United States. Motion. Filed in my office this 26th day of Jan'y, 1869. Sam'l Ellison, clerk.

And at the same time, in support of and with said motion, were filed the following papers, which said papers are in the words and figures following, to wit:

Supreme court, Jan. term, A. D. 1869.

JUAN B. VIGIL ET ALS.
vs.
THE UNITED STATES.

266 S. B. Elkins states that he is and was an attorney of the supreme court of said Territory at the Jan'y term, A. D. 1867, thereof, at which time a judgment or decree was rendered in said cause in favor of complainants; that he was present when said court announced its decision, and remembers that Theodore D. Wheaton, esq., then U. S. district attorney for said Territory, immediately thereafter asked for an appeal to the Supreme Court of the United States, which was granted by the court.

He further states that after he was commissioned as U. S. dist. att'y, vice said Theo. D. Wheaton, said Wheaton often stated to him that he had taken an appeal in said cause, and desired that a transcript should be duly made out and forwarded to the clerk of the Supreme Court of the U. S.

He further states that the Hon. Sydney A. Hubbell, then one of the associate justices of said court, after said decision was announced, took the papers in said case, for the purpose, as he stated, of writing the opinion of the court, and retained them in his possession, or from under the control of the clerk of the court, for about or near one year.

S. B. ELKINS.

267 On which said paper is the following endorsement, to wit:

"A." Juan B. Vigil et als. vs. United States. Statement of S. B. Elkins. Filed in my office this 26th day of Jan'y, 1869. Sam'l Ellison, clerk.

THE LEGAL REPRESENTATIVES OF JUAN B. Vigil, deceased, Antonio José Rivera, & Solomon Houck
vs.
THE UNITED STATES.

This cause was heard at the January term of the supreme court of New Mexico, 1867. I was present as associate justice, but having been of counsel for plaintiff, could take no part in the proceedings had in the case. Chief Justice Slough and Ass't Justice Hubbell presiding, the cause was adjudged in favor of the plaintiffs.

As well as I can recollect at this distance of time, T. D. Wheaton, esq., U. S. district attorney, requested the court to consider him as asking for an appeal. The chief justice replied that the appeal would be granted. Mr. Wheaton then in effect observed, that by
268 the statute he had one year in which to take his appeal, which afforded him ample time to communicate with the Attorney General on the subject. I recollect nothing further on the subject.

J. HOUGHTON,
Ass't Justice, &c.

JANUARY 27th, 1869.

On which said paper is the following endorsement, to wit:

"B." Vigil et als. vs. The United States. Statement of Judge Houghton. Filed in my office this 27th day of Jan'y, 1869. Sam'l Ellison, clerk.

SANTA FÉ, N. M., *Jan. 27th*, 1869.

S. B. ELKINS, Esq., *U. S. Dist. Attorney.*

SIR: In answer to your enquiry as to what took place in the supreme court of this Territory relative to the case of Juan B. Vigil and others vs. The United States, I here state that I was present in the supreme court of this Territory at the January term, A. D. 1867, of said
269 court, when the judgment in said case was announced by Chief Justice Slough, and in favor of Juan B. Vigil and others.

At the time of the announcement of the judgment, Theodore D. Wheaton, esq., the then district attorney for the United States, asked for an appeal to the Supreme Court of the United States, or rather announced that he should appeal from said judgment. Chief Justice Slough replied that the appeal would be granted. The district attorney then said that he had one year to perfect the appeal, and that he could do so without giving bonds. The court replied that it was so. This is my recollection of what took place at the time.

Respectfully, your obedient servant,

M. ASHURST,
Att'y General of N. M.

On which said paper is the following endorsement, to wit:

"C." Vigil et als. vs. The U. S. Statement of M. Ashurst. Filed in my office this 28th day of Jan'y, 1869. Sam'l Ellison, clerk.

LAW OFFICE OF S. B. ELKINS,
Santa Fé, N. M., Jan'y 4th, 1869.

Hon. T. D. WHEATON, *Ocaté, N. M.*

270 SIR: The Att'y Gen'l of the U. S. desires the sup. court of New Mexico to allow the record in the case of Juan B. Vigil et als. vs. The U. S. to be so amended as to show that an appeal was asked for by you, as U. S. att'y, and granted by the sup. court at the January term, A. D. 1867, I think.

Please make me a statement as to what action you took, also the court, in regard to said cause, so that I can lay the matter before our supreme court.

Very respectfully, your obt. servt.,

S. B. ELKINS,
U. S. Att'y, N. M.

OCATÉ, *Jan'y* 16, 1869.

D'R SIR: I have just received your letter of the — inst., in which you state there is no record of an appeal to the Supreme Court of the United States in the case you allude to. I am much surprised at this, for I not only charged the clerk to make the entry, but gave him a copy of the entry as near as I can recollect, and am as certain as a man
271 can be, at this distant period of time, that I heard the record of the appeal read in court.

Judge Houghton was present and can give you the same information, for I remember conversing with him upon the subject afterwards, though what was the purport of the conversation I do not now remember.

A writ of error will lie, I think, under the organic act, and I am ready at any time to make affidavit that I took the appeal in open court, and that it was conceded by the court.

(Signed) THEODORE D. WHEATON.

S. B. ELKINS, Esq.

On which said paper is the following endorsement, to wit:

"D." Juan B. Vigil et als. vs. The United States. Letter of S. B. Elkins. Filed in my office this 26th day of Jan'y, 1869. Sam'l Ellison, clerk.

And be it further remembered that on the same day, to wit, on the 27th day of January, A. D. 1869, being the 20th day of January
272 (A. D. 1869,) term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN B. VIGIL ET ALS.
vs.
THE UNITED STATES. } Suit for confirmation of title to land.

In this case, in consequence of the chief justice and associate justice now present having been of counsel in this case, and there being no judge present competent to set on the case, the motion and proof in support thereof presented to the court by the United States district attorney is ordered to be filed and spread upon the record, and a certified copy of the same transmitted to the clerk of the Supreme Court of the United States for such opinion, order, or judgment in the premises as said court may think proper, as this court, for the reason above stated, cannot pass upon the motion.

And be it further remembered that on the 28th day of January, A. D. 1869, being the 21st day of the January, A. D. 1869, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

273 JUAN B. VIGIL ET ALS.
vs.
THE UNITED STATES. } Suit for confirmation of title to land.

It is ordered by the court that the clerk of this court, in certifying the proceedings in this case, carefully examine the record in this cause, and certify if any entry applying for an appeal and granting of the same by the court appears upon the record.

And be it further remembered that on the 6th day of January, A. D. 1870, being the 4th day of the January, A. D. 1870, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN B. VIGIL ET ALS.
vs.
THE UNITED STATES. } Suit for confirmation of title to land.

The defendants by their district attorney now move the court, that the asking for and the allowance of an appeal in this cause to the Supreme Court of the United States be entered of record nunc pro tunc for reasons set forth in said motion, which said motion is in the words and figures following, to wit:

274 In Supreme court, Jan'y term, A. D. 1870.

JUAN B. VIGIL ET ALS.
vs.
THE UNITED STATES.

Defendants by their att'y, S. B. Elkins, move the court that the asking for and granting of an appeal in the above entitled cause to the Supreme Court of the United States be entered of record nunc pro tunc, for the following reasons:

1st. At the Jan'y term, A. D. 1867, when said cause was heard and determined by the sup. court of New Mexico, an appeal was asked for by the United States attorney to the Sup. Court of the United States, and granted by the court.

2d. The clerk of the sup. court of New Mexico, after the asking for and granting said appeal as aforesaid, at the time aforesaid, failed to make any entry showing either that an appeal was asked for or granted by said court.

And for other good and sufficient reasons. In support of said motion reference is asked to papers marked A, B, C, D, filed in the above cause on the 26th day of Jan'y, 1869, by Samuel Ellison, clerk.

S. B. ELKINS, *U. S. Att'y.*

275 On which said motion are the following endorsements, to wit:

Juan B. Vigil et al. vs. United States. Motion filed in open court this 6th day of January, 1870. W'm Breeden, clerk.

And which said papers marked A, B, C, D, are in the words and figgures following, to wit:

Supreme court, Jan. term, A. D. 1869.

JUAN B. VIGIL ET AL.
vs.
THE UNITED STATES.

S. B. Elkins states that he is and was an attorney of the supreme court of said Territory at the Jan'y term, A. D. 1867, thereof, at which time a judgment or decree was rendered in said cause in favor of complainants; that he was present when said court announced its decision, and remembers that Theodore D. Wheaton, esq., then U. S. district attorney for said Territory, immediately thereafter asked for an appeal to the Supreme Court of the United States, which was granted by the United States. He further states that after he was commissioned as U. S. dist. att'y, vice said Theo. D. Wheaton, said Wheaton often stated to him that he had taken an appeal in said cause, and desired that
276 a transcript should be duly made out and forwarded to the clerk of the Supreme Court of the U. S.

He further states that the Hon. Sydney A. Hubbell, then one of the associate justices of said court, after said decision was announced took the papers in said case for the purpose, as he stated, of writing the opinion of the court, and retained them in his possession or from under the control of the clerk of the court for about or near one year.

S. B. ELKINS.

On which said paper is the following endorsement, to wit:

"A." Juan B. Vigil et als. vs. United States. Statement of S. B.

Elkins. Filed in my office this 26th day of Jan'y, 1869. Sam'l Ellison, clerk.

THE LEGAL REPRESENTATIVES OF JUAN B. VIGIL, deceased, Antonio José Rivera, & Solomon Houck
vs.
THE UNITED STATES.

This cause was heard at the January term of the supreme court of
277 New Mexico, 1867. I was present as associate justice, but having been of counsel for plaintiffs, could take no part in the proceedings had in the case. Chief Justice Slough and Asst. Justice Hubbell presiding, the cause was adjudged in favor of the plaintiffs.

As well as I can recollect at this distance of time T. D. Wheaton, esq., U. S. district attorney, requested the court to consider him as asking for an appeal. The chief justice replied that the appeal would be granted. Mr. Wheaton then in effect observed that by the statute he had one year in which to take his appeal, which afforded him ample time to communicate with the attorney general on the subject. I recollect nothing further on the subject.

January 27th, 1869.

J. HOUGHTON,
Asst. Justice, &c.

On which said paper is the following endorsement, to wit:

"B." Vigil et als. vs. the United States. Statement of Judge Houghton. Filed in my office this 27th day of Jan'y, 1869. Sam'l Ellison, clerk.

278 SANTA FÉ, N. M., *Jan. 27th*, 1869.

S. B. ELKINS, esq., *U. S. Dist. Attorney:*

SIR: In answer to your enquiry as to what took place in the supreme court of this Territory relative to the case of Juan B. Vigil and others vs. The United States, I here state that I was present in the supreme court of this Territory at the January term, A. D. 1867, of said court, when the judgment in said case was announced by Chief Justice Slough and in favor of Juan B. Vigil and others.

At the time of the announcement of the judgment Theodore D. Wheaton, esq., the then district attorney for the United States, asked for an appeal to the Supreme Court of the United States, or rather announced that he should appeal from said judgment. Chief Justice Slough replied that the appeal would be granted. The district attorney then said that he had one year to perfect the appeal, and that he could do so without giving bonds. The court replied that it was so. This is my recollection of what took place at the time.

Respectfully, your obedient servant,

M. ASHURST,
Atty. General of N. M.

279 On which said paper is the following endorsement, to wit:

"C." Vigil et als. vs. The U. S. Statement of M. Ashurst. Filed in my office this 28th day of Jan'y, 1869. Sam'l Ellison, clerk.

LAW OFFICE OF S. B. ELKINS,
Santa Fé, N. M., Jan'y 4th, 1869.

Hon. T. D. WHEATON, *Ocaté, N. M.*

SIR: The Att'y Gen'l of the U. S. desires the sup. court of New Mexico to allow the record in the case of Juan B. Vigil et als. vs. the U. S. to be so amended as to show that an appeal was asked for by you, as U. S. att'y, and granted by the sup. court at the January term, A. D. 1867, I think.

Please make me a statement as to what action you took, also the court, in regard to said cause, so that I can lay the matter before our supreme court.

Very respectfully, your ob't serv't,

S. B. ELKINS,
U. S. Att'y, N. M.

280 OCATÉ, *Jan'y* 16, 1869.

D'R SIR: I have just received your letter of the — inst., in which you state there is no record of an appeal to the Supreme Court of the United States in the case you allude to. I am much surprised at this, for I not only charged the clerk to make the entry, but gave him a copy of the entry, as near as I can recollect, and am as certain as a man can be at this distant period of time that I heard the record of the appeal read in court.

Judge Houghton was present and can give you the same information, for I remember conversing with him upon the subject afterwards, though what was the purport of the conversation I do not now remember.

A writ of error will lie, I think, under the organic act, and I am ready at any time to make affidavit that I took the appeal in open court, and that it was conceded by the court.

(Signed) THEODORE D. WHEATON.

On which said paper is the following endorsement, to wit:

"D." Juan B. Vigil et als. vs. The United States. Letter of
281 S. B. Elkins. Filed in my office this 26th day of Jan'y, 1869. Sam'l Ellison, clerk.

And be it further remembered that on the 10th day of January, A. D. 1870, being the 7th day of the January, A. D. 1870, term of the said supreme court of the Territory of New Mexico, the following proceedings were had, which said proceedings are in the words and figures following, to wit:

JUAN B. VIGIL ET AL.
vs.
THE UNITED STATES. } Suit for confirmation of title to lands.

The motion of the defendants, by their district attorney, that the asking for and allowance of an appeal in this cause to the Supreme Court of the United States be entered of record nunc pro tunc, is now submitted to the court for its judgment upon the papers and exhibits on file, and is taken under advisement by the court.

And be it further remembered that on the 22nd day of January, A. D. 1870, being the 18th day of the January, A. D. 1870, term of said supreme court of the Territory of New Mexico, the following proceedings
282 were had, which said proceedings are in the words and figures following, to wit:

JUAN B. VIGIL ET ALS.
vs.
THE UNITED STATES.

This cause having been argued and submitted to the court on a former day of this term, on the motion of the defendants, by S. B. Elkins, esq., their attorney, to allow the entry in the record showing that an appeal in the above entitled cause to the Supreme Court of the United States was asked for by the United States district attorney at the January term, A. D. 1867, of said court, made nunc pro tunc, for reasons stated in said motion, and the papers accompanying the same; and the court having taken said motion under advisement, and being now sufficiently advised in the premises, and it appearing to the satisfaction of the court that in this cause an appeal from the judgment and decree of the court to the Supreme Court of the United States was duly asked for by the then United States district attorney at its January term, A. D. 1867, and that the clerk of the supreme court of New Mexico failed to make the proper entry in the record showing the above facts, the motion is sustained.

283 It is therefore ordered by the court that the entry showing that an appeal was asked for in this cause at the January term, A. D. 1867, of this court be made nunc pro tunc, and the appeal heretofore asked for on the part of the defendants be and the same is hereby granted.

UNITED STATES OF AMERICA,
Territory of New Mexico:

I, William Breeden, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing two hundred and eighty-three pages (this being the two hundred and eighty-third) contain a full, true, and complete transcript of the original papers and journal entries in the above entitled cause as remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 30th day of May, A. D. 1870.

[SEAL.] W'M BREEDEN, *Clerk.*

And I, the said William Breeden, clerk as aforesaid, do further certify that pages 264 to 283, inclusive, of the foregoing transcript em-
284 brace all the proceedings had in the above entitled cause since the 6th day of April, A. D. 1868, as appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 6th day of July, A. D. 1870.

[SEAL.] WM. BREEDEN, *Clerk.*

(Indorsement on cover:) No. 449. The United States, appellants, vs. The Heirs of Juan Bautista Vigil, dec'd, et al. Certiorari and return. New Mexico sup. court.

Filed 20th July, 1870.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Appellants*,
vs.
THE HEIRS OF JUAN B. VIGIL, *deceased*, *et al.*, *Appellees*.
No. 217.

Appeal from the Supreme Court of the Territory of New Mexico.

BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Appellants*,
vs.
THE HEIRS OF JUAN B. VIGIL, *deceased, et al., Appellees.*
No. 217.

Appeal from the Supreme Court of the Territory of New Mexico.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is an appeal by the United States from the judgment of the supreme court of the Territory of New Mexico confirming the land claim of the petitioners in that court, filed under the provisions of the 5th section of the act of Congress of June 21, 1860. (Printed Record, p. 5; Laws of 1859–'60, p. 72.)

The question involved in this case relates to the validity of a pretended Mexican land-grant for an indefinite number of leagues, containing, according to the estimate of the surveyor general of New Mexico, about two and a half millions (2,500,000) of acres of land, (Printed Record, p. 33, fol. 82,) situated in the Territory of New Mexico, and granted under the name of the "Jornada del Muerto," (the Journey of the Dead.)

The history of the case is this: Under the provisions of section 8 of an act of Congress dated July 22, 1854, (1 Brightly's Dig. U. S. Laws, p. 576, § 642,) this claim was first presented by the claimants on the 23d of May, 1859, (Printed Record, p. 5, 43,) to the surveyor general of New Mexico for examination and report to Congress on its validity. After a full examination, it was rejected by him on the 29th of August, 1859, (Printed Record, p. 35, 43,) for the reasons contained in his opinion and report, which will be found in the Printed Record, p. 31, &c.; but mainly on the ground, that the grant having been *conditional*, and *none of the conditions having been performed by the grantees*, the grant was invalid as a claim against the United States.

From this decision the claimants appealed to Congress, and subsequently, under the provisions of the 5th section of the act of June 21, 1860, (Printed Record, p. 5,) Juan B. Vigil, and those claiming under him, were authorized to bring suit against the United States in the supreme court of the Territory of New Mexico within two years from the passage of that act. The present suit was instituted within that time, in that court, by a petition filed October 25, 1860, (Printed Record, p. 2, &c.,) and the grounds of the claim are fully stated in that petition.

In that court, on the 25th of January, 1867, a judgment was rendered by it *confirming* the claim of the petitioners; but no opinion was ever delivered or filed

by the judges of that court giving their reasons for rendering that judgment. The same act of Congress authorized an appeal to be taken by either party from the judgment of that court within one year from the rendition of the judgment. The United States appealed.

On a motion, made by the appellees at the beginning of this term, (December T,, 1870,) to dismiss this appeal, on the ground that it had not been taken *in time*, this court refused to dismiss the appeal, holding that it was well taken and in time. (United States *vs.* Vigil, 10 Wallace, U. S. R., p. 423)

The validity of the claim in this case is, therefore, now before the court for examination *de novo* on its merits, under that appeal, and under the rules prescribed by the second proviso to the 5th section of the said act of Congress of June 21, 1860, as follows, viz:

"*And provided further*, That, in the determination of the suit authorized to be instituted by the terms of this section, the courts shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the Government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable." (Printed Record, p. 6; Laws of 1859–'60, p. 72.)

This proviso, it will be observed, is *copied* from the 11th section of the act of March 3, 1851, creating the California land board for the examination of similar private land claims in California derived under the authority of the Mexican Government. That section

prescribed the principles according to which those claims were to be judged by that board, by the district court of the United States, and by this court upon appeal, as in this case. (1 Brightly's U. S. Dig. of Laws, p. 113, § 44.)

This case arising in like manner under the treaty of Guadalupe Hidalgo, and under this special legislation of Congress, must therefore be governed by the same law and by the same general principles which have heretofore been recognized and established by this court in the determination of the validity of similar land grants in California.

At the outset of the inquiry in this court, some uncertainty may seem to exist as to the nature of the proceedings which have been had in this case; whether they are to be regarded as being conducted here *at common law*, or as *in equity*, since the record shows them to have been *conducted partly according to both methods.* Unfortunately, the act of Congress did not specifically prescribe the form of the proceedings in the supreme court of the Territory of New Mexico. On the one hand, the petition, the recorded evidence, the mode of trial, the absence of a jury, the principles of equity prescribed as one of the standards of judgment, the earlier proceedings in the case (Printed Record, p. 38, 39,) the appeal to this court allowed by the act of Congress, and the general nature of the case as a Mexican land claim arising under the treaty of Guadalupe Hidalgo, (which cases have hitherto been treated by this

court as *cases in equity*, see United States *vs.* Rocha, 9 Wallace's U. S. Rep., pp. 646, 647,)—all these facts indicate that it must be regarded as *a kind of proceeding in equity authorized by statute.* On the other hand, the court below, *in part of its proceedings at least*, seems to have treated it as *a proceeding at common law*, as it has signed and sealed numerous bills of exception for both parties; for the claimants, (see Printed Record, pp. 70, 81,) which need not and cannot be considered here, as no appeal has been taken on their behalf; and for the United States, *ib.*, p. 63 to 65, and 82 to 93, which go to the whole merits of the case. These last rulings reversed the prior ones.

Nevertheless, these bills of exceptions cannot properly be regarded as other than somewhat irregular modes of placing on record, in an equity proceeding, the objections made by the respective parties to the admission and rejection of evidence by the court, and by the United States, to the legal validity of the claim as a whole.

The legal grounds of this claim are briefly stated in the petition presented to the surveyor general of New Mexico, (Printed Record, pp. 9, 10;) and again, at greater length, in the petition filed in the court below, *ib.*, pp. 3, 7; to which this court is respectfully referred, in order to avoid unnecessary repetition.

The general legal question, as before stated, relates to the legal and equitable validity of the land claim made by the petitioners.

This question was first raised as a question of law, by the United States, by a demurrer in equity to the "bill of complaint," (Printed Record, pp. 38, 39,) but this demurrer was overruled by the court, (*ib.*, p. 39.) It was afterwards raised as a mixed question of law and fact by the "answer" filed on behalf of the United States, denying the truth of the matters and things set forth and contained in said petition," &c. (*Ib.*, p. 39.)

This issue also, was decided *against* the United States, and a decree of confirmation was entered by the court in favor of the claimants on the 25th of January, 1867, (*ib.*, pp. 101, 102.) From this decree the United States have appealed.

The appellants, under this appeal, as required by the new rules of court, (Rule No. 21, § 4,) make the following assignment of errors in the proceedings and in the judgment of the court below, viz :

The said proceedings and judgment are erroneous, and the judgment ought to be reversed—

1st. Because the pretended land grant relied upon in this case was made by the Departmental Assembly of New Mexico, not only without authority of Mexican law, but contrary to the established forms of said law for making grants of national public land.

2d. Because, supposing the grant to have been legally made, its existence was not legally proved in the court below, by the necessary and indispensable Mexican record and archive evidence of the grant; and because, on the contrary, the only written evidence of its existence,

which was offered by the claimants, admitted by the court, and objected to by the appellants, was produced from the private possession of the claimants themselves, authenticated only by oral evidence as to the genuineness of the handwriting and of the signatures to the papers.

3d. Because there is both intrinsic and extrinsic evidence of fraud in the title papers: 1st. In the alteration of the petition to the governor by adding the name of Chacon; and, 2d. In the fabrication of some of the title papers in support of the grant, viz: 1st. The additions made to the record of juridical possession by Chacon; and, 2d. The report of the committee of the Departmental Assembly marked "Exhibit H."

4th. Because the grant being *conditional*, and the right to a confirmation of it against Mexico or the United States being merely *equitable*, the claimants have no equity, *from want of consideration* arising out of a total failure to perform the conditions of the grant, either before or since, the transfer of the sovereignty in New Mexico to the United States.

5th. Because, assuming the authority from the Governor to the judge to make it, and the document, dated September 16, 1846, (A No. 2, fol. 7,) containing the order based upon it, all to be genuine and legally proved, the order suspending the obligation of the grantees to perform the conditions of the grant was inoperative and void: 1st. Because the authority to make it must have been given and executed *after* the

said 16th day of September, 1846; and, 2d. Because, at that time, neither the Mexican nor the American governor, nor the judge, could legally make or execute it: (1) Because the soverignty of Mexico in New Mexico over its public lands had ceased on the 22d of August, 1846, by the proclamation of Gen. Kearney, nearly a month before; and, (2.) Because the laws of the United States conferred no such authority on either of those officers.

ARGUMENT.

We contend that the proceedings and judgment of the court below in confirming the claim of the appellees are erroneous, and that the judgment ought to be reversed for the reasons assigned in the

FIRST ERROR.

I. Because the pretended land grant relied upon in this case was made *by the Departmental Assembly* of New Mexico, not only without authority of Mexican law, but contrary to the established forms of said law for making grants of national public land.

In the petition presented by the claimants to the surveyor general of New Mexico, (Printed Record, p. 10,) the "petitioners claim that said grant was made according to law, *according to the Spanish laws and regulations* which were declared and recognised by the government of Mexico to be in force at that time, [time of the grant;] and they refer to the collection of decrees and orders of the *Cortes of Spain*, published in Mexico

by Mariano Galvan in 1829, p. 56, and from page 91 to 101; and also *decrees of Mexico* of June 4 and September 18, 1823, pages 123 and 180, 2d vol. Colleccion de Decretos."

In regard to the decrees of the Cortes of Spain, as a source of authority for this grant, it is sufficient to say that they were invoked in the case of The United States *vs.* Vallejo, (1 Black's U. S. R., p. 541,) in support of a *sale* made by the governor of California for a money consideration. This court decided in that case that the decree of the Spanish Cortes relative to crown lands, passed in 1813, being inapplicable to the state of things which existed in Mexico after the revolution of 1820, could not have continued in force then, unless expressly recognised by the Mexican Congress, and not then without being essentially modified.

That the Spanish system of disposing of public lands was very different from that provided for by the Mexican law of 1824 and the regulations of 1828, and that the two laws being repugnant and inconsistent, the former was repealed by the latter; and, further—

That the law of 1824 and the regulations of 1828 are the *only laws* of Mexico on the subject of granting the public lands *in the Territories*, (excepting those regulating the towns and missions,) and *the authority of the governors and other officers is defined by them.* (*Ib.*, pp. 552, 554, Nelson J. See also United States *vs.* Workman, 1 Wallace, U. S. R., pp. 761, 762; Cambuston's case, 20 Howard, U. S. R., pp. 63, 64.)

These decisions also dispose of the second source of authority relied upon in that petition, viz., the decrees of Mexico of June 4 and September 18, 1823. But aside from these decisions, an examination of those laws will show that they could not confer any possible authority to make this grant, inasmuch as they relate entirely to a distribution of certain public lands among certain troops who had served in the war of Independence, *made in reward for their military services therein.*

Having thus disposed of this pretence, (which seems to have been abandoned in the subsequent stages of the case,) we come next to the authority invoked in the original petition of the claimants to Don Manuel Armijo, governor of the Department of New Mexico, under which the alleged grant was made. This petition is dated December 28, 1845.

In soliciting the grant, the petitioners specify the authority under which they ask the grant to be made, as follows:

"Most Excellent Sir: The individuals who subscribe this petition, animated by the *purest patriotism* and a desire to be *useful* to the society in which they live, *making use of the right of petition*, and of *those with which they are favored by the existing colonization laws of the Mexican republic*, * * * present this petition to the most excellent Departmental Assembly, through your excellency, *the object of which is to ask for a grant from said honorable body in the ordinary manner*, according to the 5th faculty, part second, mentioned in

article 134 of the Organic Basis, the land known as the Jornada del Muerto, &c." (Printed Record, pp. 15, 82, 83.)

The Organic Basis here referred to is that of June 13, 1843, made about two years and a half before the date of the petition. A translation of such parts of it as are necessary for understanding this reference, is here given for the convenience of the court.

"The Organic Bases of the Mexican Republic, June 13, 1843:

"Antonio Lopez de Santa Anna, well merited of the country, general of division and provisional President of the Mexican Republic, to its inhabitants: Be it known, that the honorable National Legislative Assembly, instituted conformably to the supreme decrees of 19th and 23d of December, 1842, has decreed and I have sanctioned, according to the same decrees, the following:

"Bases of the political organization of the Mexican Republic.

"Title I—Art. 1. The Mexican nation, in the exercise of its prerogatives and rights, as independent, free, and sovereign, adopts for its government the form of a popular representative republic.

"2. The territory of the republic comprehends what was formerly governed by the Viceroy of New Spain, the Captain Generalcy of Yucatan, the Commandancies of the ancient internal provinces of the east and west, Lower and Upper California, and the Chiapas, with the lands annexed, and the islands adjacent to both seas.

"3. The number of the departments and their limits are regulated definitively by one law, continuing for the present as they exist.

"*The Californias and New Mexico shall be administered with a subjection to the supreme authorities more immediately than the rest of the departments, if it should so appear to Congress, which shall give the laws* (reglas) *for their administration.* The same shall be done in one or other points on the coast, as may be required by their particular circumstances.

"4. The territory of the republic shall be divided into departments, and these into districts, partidos, and municipalities. The points whose government is regulated according to the second part of the previous article shall be called territories." * * * * * *

Title VII.—Government of the Departments.

"131. Each department shall have an assemby composed of a number of members, (vocales,) not more than eleven nor less than seven, according to the judgment for this once of the actual Departmental Assemblies. The number of the substitutes (suplentes) shall be equal to that of the proprietors. * * * * *

"134. The powers of the Departmental Assemblies are:—[among others, that cited in the petition.]

"V. To decree what is convenient and conformable to the laws in respect to the acquisition, alienations, and exchanges of the property (bienes) which belong to the public (al comun) of the department. In alienations of land, the existing laws (las leyes vigentes) will be observed, and what the colonization laws determine. ["Sobre enagenciones de terrenos de observaran las leyes vigentes, y lo que determinen las de colonizacion."]

Collecion de los decretos y ordres de interes comun, que dicto El Gobierno Provisional en virtud de las bases

Tacubaya, Tomo II, de *Julio*, 1842, a Junio de 1843, pp. 427, 466, 467. (In possession of Hon. C. Cushing.)

In this 5th enumeration of the powers of the Departmental Assemblies, it will be observed, that a distinction is made between the authority of that assembly to dispose of the private property ("bienes") belonging to the department, as a municipal organization, and the authority to dispose of the public lands belonging to the nation. In regard to the first, this power authorizes the assembly to act according to law, and to its views of propriety or convenience. But in regard to the last, *it confers no new authority.* On the contrary, it is expressly provided that, "in alienations of lands the existing laws will be observed, and what the colonization laws determine."

The result of all this is, simply, that the Organic Bases of June 13, 1843, conferred no new authority upon the Departmental Assembly of New Mexico, in the matter of grants of the national public lands; but that grants of such lands within said department were to be governed under that constitution, as they had been before, viz., by the colonization law of 1824 and the regulations of 1828. It was so ruled in United States *vs.* Workman, and United States *vs.* Carey Jones, 1 Wallace, U. S. R., pp. 751, 761, 762, 766, 769.

If so, then it is clear that this grant was made not only without authority of law, but contrary to the forms prescribed by those laws.

1st. *The consideration of the grant was illegal.*

The law of August 28, 1824, commonly called the Colonization law of 1824, is strictly a colonization law, under which grants were to be made in consideration of settlement, cultivation, and improvement of the lands granted. It does not contemplate a grant of public lands in consideration of *public improvements* such as those proposed by the petitioners. They solicit the grant in consideration of an agreement on their part to sink two wells at the most central part of the Jornada; to establish and equip two factories with modern machinery; and to provide two field pieces and a sufficient number of arms equal to the number of the workmen, to repel the hostile Indians in case they should revolt, &c. (Printed Record, pp. 15, 83.)

The Assembly, on the 10th of January, 1846, undertook to make a grant of the land solicited, "for the purpose of constructing wells and cultivating the lands as far as their means will permit, without being entitled to an exclusive right to the pasture," &c. (*Ib.* 16, 83, and 84.)

In the case of the United States *vs.* Vallejo, 1 Black, U. S. R., p. 541, this court decided that a *sale* of land in *consideration* of past *public services* or *money paid* was unauthorized by this law. So, also, it was held in the case of the United States *vs.* Castellero, 2 Black, U. S. R., p. 18, that under this law a grant for a *mine* could not be made. (See also United States *vs.* Workman, 1 Wallace, U. S. R., p. 745.)

United States *vs.* Carey Jones, 1 *ib*, 766, 769, in

which the doctrine of the case of United States *vs.* Vallejo was reaffirmed.

2d. ***The quantity of the land attempted to be granted was illegal and excessive.***

The quantity of land included in and claimed under this grant is estimated by the surveyor general of New Mexico at nearly two and a half millions (2,500,000) of acres. (Printed Record, p. 33, fol. 82.)

See also the testimony of witnesses on the extent of the grant. (Gaspar Ortiz, *ib.*, p. 20, fol. 48; Charles Blumner, *ib.*, p. 66, fol. 171, 172; Merril Ashurst, *ib.*, p. 67, fol. 173; R. H. Tompkins, *ib.*, p. 68, fol. 175.)

The maximum quantity of land grantable under the colonization law of 1824 was 11 leagues, or about 50,000 acres. See section 12 of that law. (United States *vs.* Hartnell, 22 Howard, U. S. R., 216; United States *vs.* Larkin, 18 *ib.*, 557, and Roland *vs.* The United States, 7 Wallace, U. S. R., p. 750.)

Inasmuch as there were but *two* grantees, the greatest possible quantity which could have been granted under this law was 22 leagues or 100,000 acres.

3d. *The grant was not made according to the regulations of* 1828.

1st. It purports to have been made by *the Departmental Assembly.*

Under the first and fifth regulations of 1828 *the grant should have been made by the governor*, with the *approval* of the Departmental Assembly. (See 10 Wallace, U. S. R., pp. 238, 243.) For a copy of these regulations

see same case, pp. 231, 232, citing Rockwell's Spanish and Mexican Law, &c., p. 453; Halleck's Report, Appendix No. 5.

In this case this order was *reversed*. The most that can be claimed is, that the grant was made by the Departmental Assembly with the approval of the governor.

2d. It was not made in accordance with regulations 2, 3, 4, 5, 6, 7, 8, and, 9, before cited, which require a petition to the governor setting forth the qualifications of the petitioners and a map of the land solicited; a reference of it by him to the local authority for a report; a concession of the land by the governor; the approval of the Departmental Assembly; a titulo made by the governor; a record of the grant in the archives of the government. For a copy of these regulations see 10 Wallace, U. S. R., pp. 231, 232; or for an abstract see United States *vs.* Sutter, 21 Howard, U. S. R., 180, 181; Cambuston's case, *ib.*, p. 59.

With the single exception of a petition to the governor, all the rest of these requirements have been disregarded, the error growing out of the false assumption of the right of the Departmental Assembly to make the grant. The governor did not make the grant, and would not even *recommend* it to be made by the Departmental Assembly. He simply referred the petition to the assembly for its action, as he had been requested in the petition. (Printed Record, pp. 15, 16, 82, and 83.)

It would be difficult to find or to imagine a Mexican

grant more completely unauthorized by law, or made more directly in violation of all the provisions, forms, and requirements of Mexican law.

The judgment must, therefore, be reversed, and the claim dismissed, as having no legal foundation.

SECOND ERROR.

The judgement should be reversed:

II. Because, supposing the grant to have been *legally made*, its *existence* was *not legally proved* in the court below, *by the necessary and indispensable Mexican record and archive evidence of the grant;* and because, on the contrary, the only written evidence of its existence which was offered by the claimants, admitted by the court, and objected to by the appellants, was produced from the private possession of the claimants themselves, authenticated only by oral evidence as to the genuineness of the handwriting and of the signatures to the papers.

The fact may as well be disposed of first. The documentary evidence of the grant, consists of the papers known and marked, "Exhibit A, No. 2," and of their translations. Printed Record, p. 10 to 19; *ib.*, p. 82 to 88; and "Exhibit H," *ib.*, p. 36 to 37; *ib.*, p. 92 to 93 See official translations, *ib.*, p. 94 to 101.

The evidence offered to authenticate these documents in the court below was the testimony of Augustin Duran. Printed Record, p. 43 to 48; of Donaciano Vigil, *ib.*, p. 49 to 56; * * * * of Jose Alvino Chacon

ib., p. 56 to 58; in proof of the *official character* and *genuineness of the hand writing* of the various persons whose names are signed to the documents known as "Exhibit A, No. 2;" and of Felipe Sena, and of Jose Manuel Gallegos, in proof of the same facts in regard to the document known as "Exhibit H," *ib.*, p. 60 to 61.

After the proof of *handwriting, &c.*, in regard to documents "A, No. 2," Donaciano Vigil testified generally in regard to the archives of New Mexico. (See *ib.*, p. 52, from question 60 to 65; p. 53; *ib.*, p. 54 to 55. Questions and answers Nos. 1 and 2.)

After similar testimony by Gallegos in regard to document "Exhibit H," he testifies that the Departmental Assembly was a legislative body, and *kept records of its proceedings, &c.*, *ib.*, p. 61. Question 8, *et seq.*

The documentary evidence *thus authenticated* is that which was offerred by the claimants and admitted by the court below, and which was objected to by the United States, on the general ground that it was not primary evidence, and alone—was not proper legal evidence of title, *ib.*, p. 84; *ib.*, p. 93.

The question now made in the second assignment of error was thus distinctly raised in the court below, and it was decided against the United States, and the claim was confirmed on that evidence. That decision was erroneous.

"It has been held by this court, in a long and unbroken line of adjudications, that where there has been *no archive evidence, and its absence is unaccounted for,*

and there has been no such possession as raises an equity on behalf of the party, and especially when, in addition, the expediente produced is tainted with suspicions of fraud, the claim must be rejected." Ellen E. White *vs.* The United States, 1 Wallace, U. S. R., p. 648.

See, also—

United States *vs.* Cambuston, 21 Howard, U. S. R., p. 62, 64.

United States *vs.* Sutter, *ib.*, p. 175.

Fuentes *vs.* United States, 22 *ib.*, p. 453, 454, 458, 460.

United States *vs.* Bolton, 23 *ib.*, p. 350.

United States *vs.* Luco, 32 *ib.*, p. 543.

United States *vs.* Castro, 24 *ib.*, 346.

United States *vs.* Knight's Adm'r, 1 Blacks., U. S. R. 251, 252.

United States *vs.* Vallejo, 1 *ib.*, p. 541.

Pico *vs.* The United States, 2 Wallace, U. S. R., p. 281.

Romero *vs.* The United States, 1 *ib.*, p. 745.

Peralta *vs.* The United States, 3 *ib.*, p. 440, 441.

Roland *vs.* The United States, 7 *ib.*, p. 743, 751.

Hornsby *vs.* The United States, 10 *ib.*, p. 235, 241, 244, 245.

In this case, no original archive evidence of the grant was offered, nor was any foundation laid for offering the secondary evidence, on which the decree of the court was founded. Proof of the handwriting and the

genuineness of the signatures of the officers whose names appear on the papers did not dispense with the necessity for the production of the original evidence.

22 Howard, U. S. R., p. 60, 61; 23 *ib.*, 353, 454, 455, 456, and authorities above cited.

The question is not as to the genuineness of the *signatures*, but as to the genuineness of the *documents themselves*, and of their *existence at the time when they bear date.* The *signatures* may be genuine, and yet the *documents themselves* be false and fraudulent, as has been abundantly proved by the experience of this court in California land grant cases. United States *vs.* Teshmaker. 22 Howard, U. S. R., 404, 405,; Fuentes *vs.* United States, *ib.*, p. 455, 456; Luco *vs* United States, 23 *ib.*, 534. Hence, the origin and the necessity of the rule established by a long line of authorities requiring the production of the original Mexican archive evidence to authenticate a grant of lands, or its legal equivalent.

The only evidence that any part of the pretended title papers was ever recorded in the office of the Secretary of State, is, that which shows that a part of them was recorded there on the 15th of February, 1849, in Land Register C, pp. 13, 14, and 15. But this was done after the overthrow of the Mexican dominion in New Mexico, under the authority established by General Kearney. See Petition, Printed Record, p. 4, fol. 7; testimony of Donaciano Vigil, *ib.*, p. 54, 55; testimony of David J. Miller, *ib.*, p. 58, fol. 150, and the note of the record on the papers recorded, *ib.*, p. 99, fol. 257, at the bottom of the page, fixing that date.

This record is, therefore, not an original Mexican archive record, and consequently it has no tendency to authenticate the original verity of the documents so recorded. Romero *vs.* United States, 1 Wallace, U. S. R., p. 738, 743, 744.

The judgment must, therefore, be reversed, and the claim dismissed, because it has not been and cannot be legally proved

THIRD ERROR.

The judgment should be reversed:

III Because there is both intrinsic and extrinsic evidence of fraud in the title-papers. 1st. In the *alteration* of the petition to the governor, *by adding the name of Chacon.* 2d. *In the fabrication of some of the title-papers in support of the grant*, viz: 1st. The additions to the record of juridical possession made by Chacon. 2d. The Report of the Committee of the Departmental Assembly, marked and known as "Exhibit H."

1st. *The alteration of the petition to the governor, by adding the name of Chacon.*

1. Chacon's name now appears signed to the petition, whereas he is not spoken of in the papers as one of the original petitioners, nor is he one of the grantees. (See Printed Record, p. 15, 83, 95; *ib.*, p. 16, 83, 97.) Antonio Jose Rivera, Juan Bautista Vigil y Alarid, and the foreigner Miguel Houck, are spoken of as "the *petition-*

ers," and "the citizens Jose Antonio Rivera, and Juan Bautista Vigil y Alarid," are made the *grantees*. Besides, the fact that the name of Chacon has since been added, was admitted by one of the grantees to the United States Surveyor General. (*Ib.*, p. 33, fol. 81.) And it is also, in effect, admitted by the petition to the court below, in which Chacon's name is not enumerated as one of the original petititioners, *ib.*, p. 3, fol. 2, while the others are spoken of as "the petitioners."

2. Chacon is directed to give juridical possession of the land granted—a judicial function, as he himself testifies. (Printed Record, p. 58.) Galvan's Ordenanzas de Tierras y Aguas, edt., 1851, pp. 148, 170, 174. The order is addressed to him in his judicial capacity, (*ib.*, p. 17, 85.) viz: "To the Justice and Judge of Original Jurisdiction, &c." Now, if he had been one of the original petitioners he would not have been selected as *the judge* to give possession of the land to the grantees.

Why he should have falsified the record by adding his name to the original petition, it may be difficult to understand; but the fact that he has done so, *without any apparent motive*, furnishes irresistible evidence that he would not hesitate still further to falsify it if it could be made his interest to do so.

2d. *The fabrication of title-papers in support of the grant.*

1st. The additions to the record of juridical possession made by Chacon.

An examination of the original title-papers offered

in evidence in this case results in the discovery of *two sets of papers.*

The first set consists, first, of the petition to the governor, the reference to the Departmental Assembly, and the legislative grant, all contained upon one sheet of paper, marked folios 3 and 4, (for translations of them see Printed Record, pp. 15, to 16, 82, to 85, 94, to 95, 97:) and, second, of the record of the juridical possession given by Chacon, and the certificate of its registration in Book C, pp. 13, 14, and 15, also all contained upon one sheet of paper, marked folios 10 and 11. This last document is signed at the bottom of the first page by J. Albino Chacon, and is witnessed by JORGE RAMIREZ *Jesus Maria Tafoya.* On the second page it is signed by J. Albino Chacon and Antonio Jose Rivera, and is also witnessed by the same JORGE RAMIREZ and *Jesus Maria Tafoya.* On the fourth page it is also signed by J. Albino Chacon, Juan Bautista Vigil y Alarid, and Antonio Jose Rivera, and is *attested by the same witnesses.* It is dated March 15, 1846. Immediately after, follows the certificate of registration, before referred to, signed by Donaciano Vigil, recorder, which is dated February 15, 1849. This is the document spoken of by Donaciano Vigil, as a witness, as having been recorded in Book C. Printed Record, p. 54, 55. A translation of part of it will be found at p. 99, folios 256 and 257.

Whether the first part of this set of papers was *recorded* or not, does not appear. From the testimony

of the witness, D. Vigil, and the description given by him of the paper recorded, the probability is that *only the second part* (the record of the juridical possession) was recorded. But, whether both parts of of this set of papers were recorded, or only the last part, it is evident that the last document correctly represents the condition of the alleged title at the date when it was recorded. If any supplements had *then* existed, they would have been recorded.

The second set of papers consists of, first, the petition to the governor, &c., as before described. Second, of another record of the same act of juridical possession, with slight verbal differences, bearing the same dates, signed at the foot of the first page by J. Albino Chacon, and witnessed by Jesus Maria Tafoya and TELESFORO SALAZAR. It is again signed on the second and third pages by *all the same parties*, and on the fourth page by J. Albino Chacon, Juan Bautista Vigil y Alarid, and Antonio Jose Rivera, but *without the attestation of any witnesses*. It also contains a note on the margin in these words: "Dros de posecion, 150 pesos," (fees of possession, 150 dollars,) written in a different ink, in a different handwriting, and it looks as if it had been written with a steel pen at a subsequent time. The principal difference in this record, besides those already noted, consists in its containing a copy of the governor's order of February 4, 1846, which is referred to but is not copied into the other record, before referred to. This document is marked A. No. 2, fol. 5 and 6. For

translation of it see Printed Record, pp. 16, 18, 84, 86.

3. This second set also includes *a third document, not included in the other set*, dated September 16, 1846, and which is marked fol. 7. It is witnessed at the top of the first page by TELESFORO SALAZAR and Jesus Maria Tafoya. At the top of the second page it is signed by J. Albino Chacon, and is attested by *the same witnesses*. These signatures are followed by the "razon" or suspensory order purporting to emanate from the governor. It is without date, and is without signatures, other than a rubric, but is in a different handwriting and ink, and was evidently written at a date subsequent to September 16, 1846. For translations of it see Printed Record, p. 18, fol. 43, 44, 100.

None of the papers in this set bear any certificates or evidence of having been recorded.

They are the papers spoken of by Donaciano Vigil in answer to question 65, Printed Record, p. 53. "State if you know whether the documents in Exhibit 'A' No. 2, were filed in the Secretary's office, and if so, *whether any portion of them were recorded, and by whom.*" Answer. "I do not recollect whether THESE were recorded or not, *because the originals are not certified*, but if there is any record and in my handwriting, I will say whether or not it is correct." He subsequently examined the record, Book "C," and found the record of the juridical possession, before referred to as forming part of the first set of papers. (Printed Record, pp. 52 and 53.)

It is therefore proved, both affirmatively and negatively, that these last papers never were recorded, and that they formed no part of those which were recorded on the 15th of February, 1849.

They are an after-thought, got up since that date, with a view to explain the non-performance of the conditions of the grant by the grantees, and thereby to counteract the evidence of abandonment arising out of their conduct.

The second and third parts of this second set of papers were evidently got up at the same time, because they are both signed and witnessed *by the same parties*, but unfortunately the *witnesses* to these papers are *different* from those which attest the record of juridical possession which was recorded as the original and genuine document.

The apparent necessity for the new set of papers will be seen by an inspection of the copy of the record of the act of juridical possession which was recorded February 15, 1849. The certificate of registration on that document is *at the bottom* of the last page, precluding the possibility of any postscript thereon, such as was desired.

In order to make room for such a postscript, an entirely new paper had to be invented, *leaving the desired room.* It was done; and accordingly we find that postscript written on the vacant space on the last page of this third paper. By placing the two papers together, it will be seen that they have the same folds,

the same holes penetrating them, as if they had been sewed together, and the same tears upon the folding edge. It is evident, therefore, that these two papers had the same origin, that they have travelled together, and must share the same fate. They are both *alike genuine*, or both *alike fraudulent.*

But it is demonstrated by the act of the claimants themselves, that the first act of juridical possession, recorded by them on the 15th of February, 1849, was the true and genuine document. Therefore, these papers are fraudulent. The fact that the third paper of the second set on which the suspensory postscript is written, was not recorded at that time, is the best evidence in the world that it did not then exist. If it had then existed, it would have been recorded, and recorded in company *with its companion piece*, which would have been preferred for record to the one which was recorded, because of its being in harmony with it, inasmuch as they are both signed and *witnessed* by the same parties. Proof of the fraudulent character of one of these papers is proof of the fraudulent character of both.

But it will be asked, *What motive* had Chacon for fabricating these papers?

We have already seen what motive *the claimants* had for having them fabricated; the record discloses the motive which *Chacon* had. The claimants *made it his interest* to do so, by agreeing to convey to him *one-fourth interest in the grant* the confirmation of which was sought from the Government of the United States.

This contract is document "A No. 6," and IS DATED MAY 23, 1859. The *consideration* of this agreement is thus stated: "The said Juan Bautista Vigil, knowing the *great* and *useful services* which *have been* and *are now being rendered by Albino Chacon* (who as *judge* of the first instance at that time, carried out the execution of the said title from the begining to the delivery of the copy, and placing the parties in possession of the land aforesaid,) [for which last service he charged and was paid $150. Printed Record, p. 18, fol. 43] *as compensation for said services*, and in consideration of the said Albino Chacon *being of the petitioners* for said land [which we have already shown to be untrue, ante p. 21 and 22,] and in conformity also with the privileges conferred upon the grantees in the aforesaid acts of concession of admitting one or more associates at their will, *therefore*, the said Juan B. Vigil y Alarid binds himself, &c., to give him an equal interest, as conferred upon them in said land of the Jornado del Muerto; that is to say, *one-fourth interest in said land*, or its equivalent, which the said Albino Chacon accepted, and binds himself *to aid in paying costs* (if it becomes necessary to do so) *until* the final concession is made by the government to which this territory now belongs." (Printed Record, p. 26.)

It will be observed, that the final concession of the land by the United States is regarded as a fixed fact, and that the only real consideration expressed, after the elaborate attempt at getting up a *show* of consideration, is the contingent liability to aid in paying costs, *if ever*

that contingency should arise, until the final grant was obtained from the United States.

An attention to the dates of transactions often throws great light on subjects. It is so in this case.

A reason to account for *past* non-performance of the conditions of the grant had to be invented, so as to strengthen the claim as against the United States; that was done in the suspensory postcript, as follows:

"Note.—Don Manuel Armendaris, resident of the Department of Chihuahua, having claimed part of the land contained in this grant, on the northern boundary of the little table land of the Contadero, *it is ordered, by direction of his excellency the present governor*, that the owners and proprietors of the Jornada del Muerto shall not proceed to construct the wells *until* the suit between the heirs of the late Don Francisco Xavier Chaves shall be decided, and therefore *the term of five years limited for the construction of the wells, shall be counted from the day on which the said northern boundary shall be established*, be it by the said Armendaris or the heirs of the late Chaves, the other parties to the suit, and in order that it may so appear, I have made this note, which I have rubricked. [Rubric."] (Printed Record, pp. 18 and 19, &c.)

It will be observed, that the writer of this note had not then discovered that the grant was made *without conditions*. That was discovered afterwards, when the claim had been rejected for non-compliance with the conditions of the grant.

On the 23d day of May, 1859, the claimants presented their petition and *proofs of claim* to the surveyor general of New Mexico. (Printed Record, p. 5, fol. 8. Testimony of John A. Clark, *ib.* p. 43.) That

petition is Document A, No. 1, *ib.* p. 9. At the close of that petition, on p. 10, is the following extract:

"*Petitioners herewith file as proof, original documents marked in folios from* 1 *to* 9, by which they hope to prove the justice of their claim both in law and equity, and that the same may be confirmed to them. *Giving notice that on the north side of said land,* about twenty-seven or thirty miles are in dispute, with other deeds, appearing previously [to] belong to the heirs of the late Pedro Armendaris; and to avoid dispute, the original and present claimants have agreed that *their northern boundary shall be the southern boundary called for by the deeds of the said Armendaris.* All of which is most respectfully submitted by

"J. HOUGHTON,
"*Attorney for Claimants.*"

Thus, "all the clouds which lowered" upon this grant were swept away by a few strokes of the magical pen of Chacon. *The past was fully accounted for.* The northern boundary of the grant was settled by the trifling surrender of about 27 or 30 miles on the northern border. Five years from the date of this surrender were gained for complying with the conditions of the grant, and Chacon had become the owner of one-fourth of the grant, in reward for his valuable "services!" And mark! all this had been *consummated* on the same momentous day, viz., May 23, 1859! *The claimants had got new title papers,* which they were now enabled to present to the surveyor general on that day, and as the equivalent therefor, Chacon had at the same time got an assignment from the claimants for one-fourth of the land—

"And the same day, Pilate and Herod were made friends together; for before, they were at enmity between themselves."

It is proved by the witnesses, Augustin Duran and Donaciano Vigil, that the papers in question, viz., folios five, six, and seven, document marked A, No. 2, are written and signed by Jose Albino Chacon (Printed Record, p. 45, Quest. and Ans. 27, 28, 29, *ib.* p. 51, Quest. and Ans. 39 and 44) Chacon himself was examined as a witness. Notwithstanding the evidence in the record of his interest in the case, he was not examined or cross-examined on that subject. He testifies that he made and signed the papers in question, but he is careful *not* to say, *when*. Printed Record, p. 57, Quest. and Ans. 8 and 9, fol. 147.

There is no evidence of the *existence* of these papers, prior to May 23, 1859; the date at which they were filed in the surveyor general's office. There is no evidence of their authenticity, but proof of the genuineness of signatures and handwriting. While, on the contrary, there is positive evidence that they did not exist on the 15th of February, 1849, when the first record of the juridical possession was recorded.

In order to fortify these last papers, and to give apparent validity to the action of Chacon as judge, on the 16th of September, 1846, and subsequently to that date, an attempt is made to show that he continued to act as a judge until September 22, 1846.

This is done by a document manufactured by Vigil,

the grantee, dated September 3, 1846, (Printed Record, p. 88,) or September 21, 1846, (*Ib.*, p. 21,) in which Vigil, as *governor*, appears to accept Chacon's resignation at those dates. Admitting, for the sake of the argument, that the true date of the document is September 21, 1846, still there is no archive evidence of the authenticity of this paper. On the contrary, its authenticity is destroyed by the proclamation of General Kearney, dated August 22, 1846, which is certified by Vigil, the grantee. (Printed Record, p. 9.) In that proclamation it is declared, and in the petition to the court below it is admitted, that General Kearney took possession of the Department of New Mexico on the 18th day of August, 1846. Duran, a witness examined for the claimants in the court below, swears that Armijo, the Mexican governor, ceased to be governor in the month of August, on the entrance of the American troops. (Ib. p. 44) General Kearney, at the close of his proclamation, issued August 22, 1846, declares, that "for the present, *he* will be considered as *the governor* of the Territory." (*Ib.*, p. 9.) The proclamation is issued by him as governor, and that fact is attested by Vigil, the grantee. There is no evidence to show that this proclamation was *countermanded*, or that General Kearney *ceased* to act as governor from August 22 to September 22, 1846. If so, then Juan Bautista Vigil y Alarid could not have acted as governor, nor as such have accepted Chacon's resignation on the 21st of September, 1846. This pretence is contradicted and over-

thrown by the proclamation itself. It was set up in the testimony of D. Vigil before the surveyor general (Printed Record, p. 22, fol. 52,) but in the testimony of the same witness afterwards in court, he did not renew his testimony on that point.

If General Kearney was the governor, and acted as such, during the period of from August 22, 1846, to September 22, 1847, then the pretence that *he* gave the order to suspend compliance with the conditions of the grant until its northern boundary was fixed, is too monstrous to be believed. There is not a particle of evidence that he gave any such order.

In accounting for the fabrication of these papers, it must be remembered, that they are dovetailed into each other by Vigil and Chacon—two parties equally interested, who are both engaged in making out a case for themselves, under cover of the official positions which they formerly held under the government of New Mexico, when under the Mexican rule!

2d. We come next to consider the report of the committee of the Departmental Assembly, marked and known as "Exhibit H," Printed Record, p. 96, 97.

This is a base fabrication, and was evidently made for the occasion.

As we have already seen, Chacon, when he signed with his rubric, the postscript or note to the Document "A No. 1," fol. 7, called the "Razon," (Printed Record, p 14, 18,) understood the grant to be *conditional;* and further, that the object of that postscript was to gain "a

new departure" for the five years within which *the conditions* were to be fulfilled.—*Ante, p.* 29 &c.

But the claim was rejected by the surveyor general, mainly on the ground of a failure on the part of the grantees to fulfil the conditions of the grant. (Printed Record, p. 34, fol. 86, *Ib.*, p. 35; petition to the court below, *Ib.*, 5, fol. 8.) That unexpected result was followed by a change of tactics, in order to obviate that objection.

"Your petitioners further state that *after* said decision of the surveyor general, and the appeal therefrom, your petitioners *found* the proceedings and report of the Departmental Assembly, made 10th of January, 1846, at the time of said grant, from which it appears that it was *not* the intention of said committee that said grant should be *incumbered*, for the reasons therein stated, *with any conditions*, as will appear by a copy of the report of said committee, hereby made a part of this petition, marked Exhibit "H" herein. [Printed Record, p. 36; Translation, *Ib.*, p. 96, 97.] Your petitioners further state, that in conformity with the recommendation of said committee, in confirming said grant on the said 10th day of January, 1846, it was so confirmed to the said Vigil and Rivera, *without any condition, reservation, or incumbrance, except* that the right of pasture upon the land aforesaid should be common and not exclusive; *which condition*, being inconsistent with the perfect nature of the grant in fee, is inoperative and void." (Petition to the court below Printed Record, p. fol. 9.)

This important document was not presented, at first, as a part of the chain of title. But after the claim had been rejected for non-performance of conditions, then for the first time is it produced. It was "found," says the petition; but, *when*, or *where*, or by *whom* it was found, is not stated in the petition, nor is any light thrown on these points by the witnesses Sena and Gallegos, who were called to authenticate, it simply by proof of their own handwriting. (*Ib*, p. 60, 61.)

1. The first fatal objection to the genuineness of this *document* is that there is no Mexican record or archive evidence of its existence. It was not even recorded as a part of the chain of title when other papers were recorded on the 15th of February, 1849. If it had been, we should have had that evidence of *its prior existence*, at that date, but we have not even that.

2. The second objection is, that it is produced from the private custody of the claimants, to meet an unforeseen exigency, without other evidence of its authenticity, than proof of the handwriting of those who made it. Besides, it is professedly a "copy," and no legal proof of the existence or loss of the original is given to lay the foundation for its introduction.

3. There is *internal evidence* in the document itself that it is not genuine. First. Its pretended origin is grossly *improbable*, if not *impossible*, in the ordinary course of business among lazy and dilatory Mexicans. The reference of the petition by the governor to the Departmental Assemby; its reference by that assembly

to the committee; their report: and the grant itself, *are all dated on the same day*, viz., January 10, 1846. (Printed Record, p. 95, 97.) indicating a degree of haste and dispatch of public business, in a matter of so much importance—the grant of two-and-a-half millions of acres of public land—quite unusual and incredible.

2d. The contents of the report are ridiculously improbable. The claimants, in their petition to the governor, as conditions of the grant which they solicited, had proposed to dig wells, erect factories, and to furnish arms and artillery for defense against the depredations of hostile Indians, &c. (Printed Record, p. 15, 82, 83.) The proposition made by the petitioners was of such an extraordinary character that the governor would not even recommend to the assembly the grant of the petition. He simply referred it to them as he had been requested in the petition. (*Ib.*, p. 16, 83.)

The committee, in hot haste, but nevertheless in an elaborate report, refuses to accept the conditions offered; characterized them as "*inconsiderately made by the applicants;*" as "extravagant, expensive, and dangerous." "The committee, therefore, recommend that your excellency *tacitly reject such wild and almost impracticable conditions, which cannot and will not be complied with.*" "The committee further recommend the grant to be made to the applicants in the most simple terms, without referring in the concession to *any* of the conditions mentioned by the applicants in their petition of the 28th of December last," and according to a form

which is a copy of the pretended legislative grant in this case. (Printed Record, p. 96, 97.)

A grantor refuses to accept the conditions on which a grant is solicited, and the grant is made without them! Who ever heard of such a thing before, in the history of actual business? The idea is absurd on its face. Such a report was never made at that time. If, however, the report is regarded as *ex post facto*, got up to serve a purpose after the decision of the surveyor general, to excuse the grantees for their failure to perform the conditions of the grant, then we have a rational theory for its origin, proved by its own contents But it failed in its object: *the grant could not be changed.* It is important here and now only as illustrating the wisdom and necessity of the rule established by this court requiring these Mexican grants to be proved by original archive evidence, or by its legal equivalent, in case of its loss, after the prior existence of such archive evidence has been duly proved.

The objection to the genuineness of these papers may be made here, because no original archive evidence of their existence was offered in the court below. U. S. *vs.* Anguisola, 1 Wallace, U. S. R., p. 352, 357. U. S. *vs.* Yorba, *ib.*, pp. 421, 422.

If, therefore, an alteration of the petition by Chacon, and the fabrication of additions to the act of juridical possession, and of this report of the committee, or of either of them, have been successfully shown, the title becomes tainted with fraud, and the claim must be rejected.

"In a California land case the production of a fraudulent and false certificate of approval, signed by the governor and secretary who signed the grant, and proved by the same witnesses in the same way that the grant was proved, affords (in the absence of explanatory evidence strong ground for believing all the title-papers to be fabricated." U. S. *vs.* Galbraith, 2 Black, U. S. R , pp. 393, 403, 404, 407. Nelson, J.

It was also held in the same case, that when the date of a grant has been altered while it was in the hands of the claimants, and is produced to the court without evidence to show how the alteration came to be made, this court cannot confirm the title. In illustration of the same principle, see, also—

De Haro *vs.* United States, 5 Wallace, U. S. R., p. 629.

Stearns *vs.* United States, 6 *ib.*, p. 593.

Roland *vs.* United States, 7 *ib.*, pp. 748, 751.

The judgment must, therefore, be reversed, and the claim dismissed, because it is tainted with fraud.

FOURTH ERROR.

The judgement should be reversed:

IV. Because the grant being *conditional*, and the right to a confirmation of it against Mexico, or the United States being *merely equitable*, the claimants have *no equity, from want of consideration*, arising out of a total failure to perform the conditions of the grant, either before or since the transfer of the sovereignty in New Mexico to the United States.

Assuming the genuineness of the report of the committee, and that the legislative grant was legally and regularly made, nevertheless, the grant, as made, by its terms and by law, was conditional, and it is void as against the United States for non-performance of its conditions

Notwithstanding the report of the committee, the grant, by its terms, requires, at least, *the digging of the wells and the cultivation of the land.* It was made "*for the purpose* of constructing wells and cultivating the lands as far as their [the grantees] means will permit, without being entitled to an exclusive right to the pastures, &c." Printed Record, p. 16, 83, 84. The grant having been solicited by the grantees, *on the condition*, among other things, *that they would construct two wells.* (See Petition, *ib.*, p. 15.) And the grant having been made "for that purpose," and the other purposes named, *these purposes thereby became the conditions of the grant.*

If the grant was made under the colonization law of 1824, (as we have shown that it was, and must have been) then, *that law imposed other conditions, whether they were expressed in the grant or not.* In the United States *vs.* Yorba, (1 Wallace, U. S. R., p. 423,) it was held by this court, that the conditions of a colonization grant need not be inserted in the grant; that they are implied by law, and that if those conditions are fulfilled the grant is valid. Those conditions are possession, cultivation, inhabitancy, making improvements, &c., as defined by the regulations of 1828.

The grant, therefore, was *conditional*, both by its terms and by operation of law.

Now, it is admitted, by the petition to the court below, that *these conditions have not been fulfilled*, and an effort is made to excuse their non-performance on various grounds, such as the disputed northern boundary of the grant, the hostile condition of the Indians, the order suspending the performance of the conditions, the change of sovereignty before the expiration of the five years after the grant was made, and the want of denouncement, or re-grant by Mexico. (Printed Record, p. 6 and 7.)

Nevertheless, the fact remains, that a claim is now made against the United States for two-and-a-half millions of acres of land, claimed under a Mexican grant, and it is at the same time admitted that there has been a *total failure on the part of the grantees to fulfil a single one of the conditions on which the grant was made, either before or since the change of sovereignty in New Mexico!*

It is true the act of juridical possession shows that the grantees were put into *formal* possession on the 15th of March, 1846, (Printed Record, pp. 18, 85, 86, 99,) but, nevertheless, the admitted fact is, that they have never had any real possession of the land, nor have they ever exercised any acts of ownership over it. The excuses given for not performing the conditions, as well as the extent of the grant itself show, that the grantees had not, and could not have had any actual possession of the land.

Now, the right to a confirmation of these Mexican land grants *rests mainly on equitable considerations*, and unless *an equity is shown* by the claimants which would bind the conscience of Mexico, none can exist against the United States under the treaty of Guadalupe Hidalgo.

It will not be pretended that the title of the claimants is what is technically known as a "perfect legal title," because it has not the forms of law which constitute such a title. It must, therefore, be an "*equitable*" title, both in name and in fact; and unless an equity is established, such as arises out of a substantial performance of the conditions of the grant, the claim has no merit, and the title must be rejected.

For the authorities in support of this position, see the summary of them in White *vs.* The United States, 1 Wallace, U. S. R., p. 684, before cited.

"It has been held by this court, in a long and uninterrupted line of adjudications, that *when there is no archive evidence*, and its absence is unaccounted for, *and there has been no such possession as raises an equity in behalf of the party*, and especially when, in addition, *the expediente produced is tainted with suspicions of fraud, the claim must be rejected.*"

This case falls completely within that category. See also 23 Howard, U. S. R., pp. 312, 497, 498; 22 *ib.* p. 406; United States *vs.* Galbraith, R., 2 Black, U. S. R., pp. 406, 407; Pico *vs.* The United States, 2 Wallace, U. S. R., p. 282; United States *vs.* Gomez, 3 *ib.*,

p. 767; Peralta *vs.* The United States, *ib.*, p. 434; United States *vs.* Repentigny, 5 *ib.*, pp. 213, 266.

In the last case reported, Hornsby *vs.* The United States, 10 Wallace, U. S. R., this doctrine is fully asserted both by the majority and by the minority of the court, (see pp. 241 and 245, and cases there cited.) The case of The United States *vs.* Repentigny is a strong application of this doctrine, in the case of a French and British grant, made since the case of White *as.* The United States.

FIFTH ERROR.

The judgment should be reversed:

V. Because, assuming the authority from the governor to the judge to make it, and the document, dated September 16, 1846, (A. No. 2, fol. 7,) containing the order based upon it, all to be genuine and legally proved, the order suspending the obligation of the grantees to perform the conditions of the grant was inoperative and void, first, because the authority to make it must have been given and executed *after* the said 16th day of September, 1846; and, second, because, at that time, neither the Mexican nor the American governor, nor the judge, could legally make or execute it, (1,) because the sovereignty of Mexico in New Mexico over its public lands had ceased on the 22d of August, 1846, by the proclamation of General Kearney, nearly a month before, and (2) because the laws of the United States conferred no such authority on either of those officers.

As this view is strongly presented in the report of the surveyor general, we content ourselves with referring the court to that part of his report. (Printed Record, pp. 33, 35.) In order to understand it fully, so far as Vigil, the grantee, is concerned, it is proper to remind the court that there was evidence before the surveyor general to show that Vigil had acted as governor until September 22, 1846, (*ib.*, p. 22,) but there was no such evidence before the court below.

After the change of sovereignty. the only authority which could suspend or excuse the non-performance of the conditions of this grant was the Congress of the United States.

All the acts of the political or judicial authorities of Mexico in regard to land titles after the change of sovereignty were inoperative and void. The latest authority on this point is Hornsby *vs.* the United States, 10 Wallace, U. S. R., p. 239, 243, 245, and authorities there cited.

We therefore confidently submit that the judgment of the court below confirming this grant must be reversed, and the claim dismissed for the reasons stated

1st. Because the Departmental Assembly of New Mexico had no power to make it.

2d. Because, even if it had, the grant has not been legally proved.

3d. Because the title papers are tainted with well-founded suspicions of fraud.

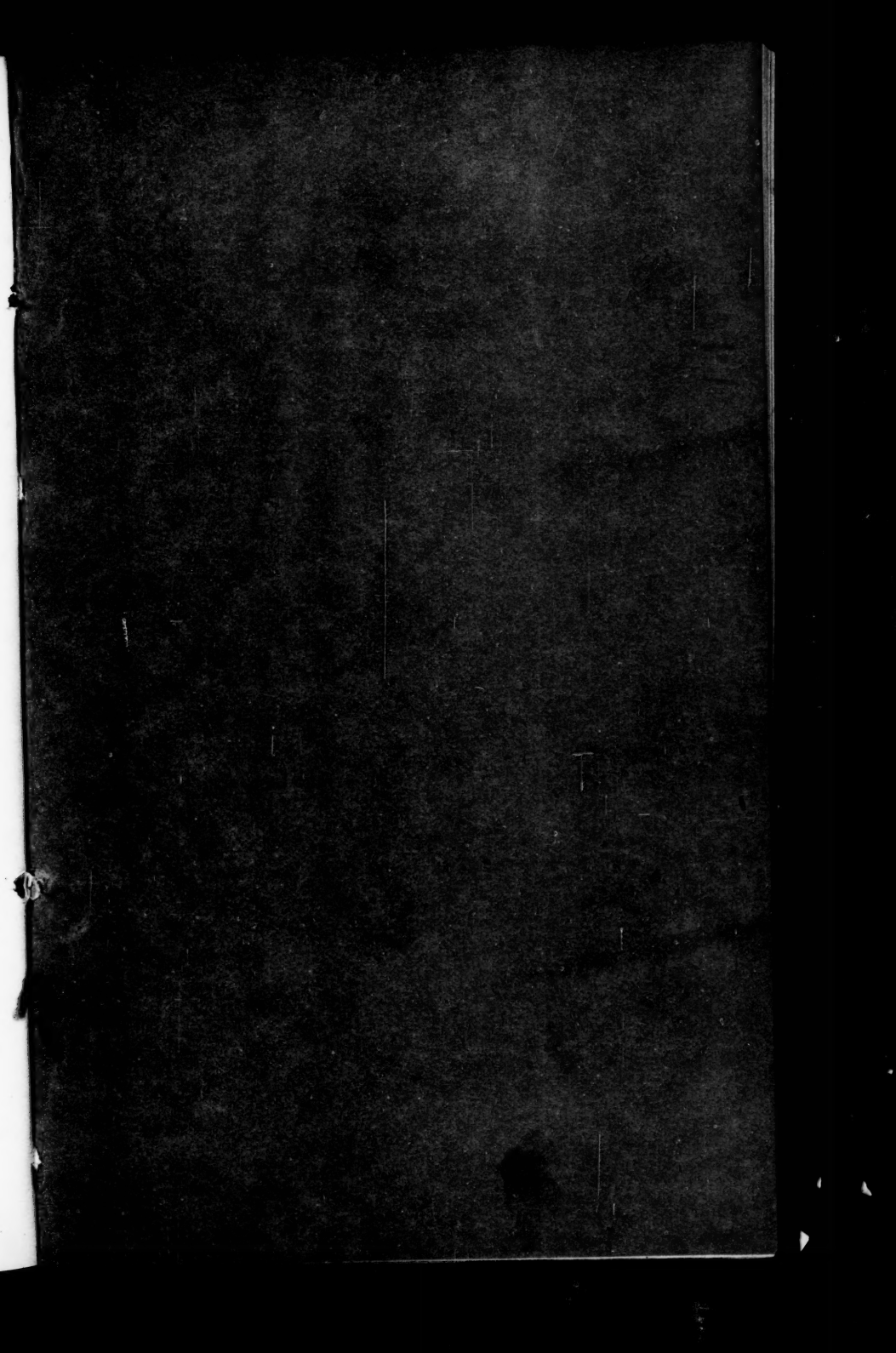
4th. Because the grant was conditional, and the

grantees have no equity, inasmuch as they admit a total failure to perform any one of the conditions of the grant.

5th Because, admitting the genuineness of the order suspending the performance of the conditions of the grant, there was no legal authority to make it.

If any one of the errors assigned has been maintained, the judgment must be reversed.

B. H. BRISTOW,
Solicitor General.
JOHN A. WILLS,
Special Counsel for the United States.



Supreme Court U. S. of America.

DECEMBER TERM, A. D. 1871.

UNITED STATES, *Appellants*,
vs.
THE HEIRS OF JUAN BAUTISTA VIGIL, *deceased et al.*

JOHN S. WATTS,
Attorney for Appellees.

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Supreme Court U. S. of America.

DECEMBER TERM, A. D. 1871.

UNITED STATES, *Appellants*,
vs.
THE HEIRS OF JUAN BAUTISTA VIGIL, *deceased et al.*

On the 28th day of December, 1845, at Santa Fe, New Mexico, Antonio Jose Rivera, Juan Bautista Vigil y Alarid, and Joseph M. Houck, petitioned the Governor of New Mexico, for a grant of land situate in Southern New Mexico, in Dona Ana County, and bounded as follows, to wit: "On the northwest the little table land of "the Contidero; on the west the Del Norte river; on "the south the old site of Dona Ana, and on the east the "range of the Sandia Mountains, with its tributaries in "that direction." This locality was more frequently known as the "Jornada Del Muerto."

On the 10th of January, 1846, Don Manuel Armijo, then Governor of the Province of New Mexico, referred this petition to the Departmental Assembly for their consideration and action on the petition for said grant. On the said 10th day of January, 1846, the Departmental Assembly granted land to Antonio Jose Rivera, and Juan Bautista Vigil y Alarid, excluding Miguel Houck from the grant because he was a foreigner.

On the 4th day of February, 1846, the Governor gave an order to J. Albino Chacon, Judge of the first instance,

to deliver possession to the land granted to Vigil and Rivera. On the 6th day of February, 1846, said J. Albino Chacon acknowledges the receipt of the order, with direction to admit Don Miguel Houck into the grant if he presented his naturalization papers showing that he was a Mexican citizen.

On the 15th of March, 1846, in pursuance of the order, and decree, said J. Albino Chacon proceeded to place Antonio Jose Rivera, Juan Bautista Vigil y Alarid and Jose Miguel Solomon Houck in possession of the lands set forth in the petition; Houck having, in obedience to the order of the Governor, produced satisfactory papers of naturalization as a Mexican citizen.

On the 18th of August, 1832, it appears that Jose Miguel Houck, a native of Virginia, had been admitted, according to law, as a citizen of Mexico.

There will be found a note at the bottom of the judicial possession, given by J. Albino Chacon, stating that Don Manuel Armendaris claimed a portion of the lands on the north, and that until that dispute was settled, that no wells should be dug, and that the limitation of five years should not begin to run until that dispute as to the boundary was settled.

In the petition for the grant, it was proposed to dig wells on the Jornada, and build factories for criminals, within five years, and the Committee of the Territorial Assembly, one of whom, Don Jose Manuel Gallegos, is now the Delegate in Congress from New Mexico, reported that, "believing that the danger from the Indian "incursions, who are now at war, and never at peace in "good faith, will prevent the applicants from deriving "any benefit from the grant to the Jornada Del Muerto. "The Committee therefore recommend, that your Excel- "lency tacitly reject such wild and almost impracticable "conditions, which cannot nor will not be complied with;

"and the Committee are of the opinion that the scheme "will only tend to compromise the parties." See page 92 and 93 of the Printed Record.

This title was during the military occupation of New Mexico, under an act of registration passed by General Kearney, duly recorded February 15, 1849, by Donaciano Vigil, Recorder of Land Titles, under the provisions of the 8th section of the act of Congress of July 22, 1854, this title was presented to Surveyor General of New Mexico for investigation.

The authenticity and good faith of the title papers were established, evidence taken, and on the 18th day of December, 1854, was submitted for decision of the Surveyor General, see page 31, Printed Record, and the Surveyor General held that the grant was without merit and not entitled to confirmation, because the conditions attached to the grant had not been complied with. On July 29, 1859, the grantees asked an appeal to Congress, and it was granted, see page 30, Printed Record. When this appeal went before Congress, the Committee on Private Land Claims of the Senate recommended that the validity of this claim and the rights of the parties should be passed upon by the judicial tribunals of the country and not by Congress, and for that purpose the 5th section of the act of June 21, 1860, was passed, see page 5 of Printed Record for copy. This act authorized suit to be brought by Vigil in the Supreme Court of the Territory of New Mexico; and the suit was brought at the January Term, 1861, of said Court, and on the 11th day of January Term, 1871, being 2d day of March, 1861, demurrer to the petition was filed by the United States, and argued and overruled by the Court. On page 59, Printed Record, will be found the answer of the United States to this petition, and as the answer is brief and comprehensive it is copied as follows:

"And now comes the defendant, by her attorney, and "for answer to the petition filed herein, states that the "matters and things set forth and contained in said peti- "tion, are not true as therein stated, and alleges that the "property and real estate therein described is not the "property of said plaintiffs, but of right appertains and "belongs to the said United States, and this he is ready "to verify, wherefore he prays judgment, &c."

Wheaton for the United States.

For several years this case was pending in the Supreme Court of the Territory of New Mexico, during which time the documents of title were duly proved and introduced as evidence, and the testimony of various witnesses were taken as to usage and custom of granting lands in New Mexico, and as to boundaries of the grant and the distance between them, and as to whether any wells or factories were on the grant. On January 14, 1867, this case was submitted to the Supreme Court for decision upon the petition, answer, exhibits and testimony, and having been submitted by the parties on written briefs, and the court being fully advised in the premises, decreed as follows:

"It is ordered, adjudged and decreed, that all of the "land within the boundaries specified in the original "grant by the Departmental Assembly of New Mexico, "on the 10th of January, A. D. 1846, in favor of the "plaintiffs in this suit, except such portions of said land "as are contained within the limits of certain Spanish "grants made to Pedro Armendaris, and confirmed to "said Pedro Armendaris, and his legal representatives, "by act of Congress approved June 21, A. D. 1860, be "confirmed to the legal representatives of Juan Bautista "Vigil y Alarid, deceased, Antonio Jose Rivera and "Miguel Houck. This decree shall not be so construed "as to affect the rights of persons not parties to this

"suit." From the 25th day of January, 1867, until the January Term, 1869, nothing was done in the case, so far as known to the record, but at the said January Term 1869, S. B. Elkins, United States District Attorney of New Mexico, moved the Court for a *nunce pro tince* entry upon the record of an appeal, said to have been asked for at the said January Term, 1867, and omitted by the clerk to be entered on the record. In support of this motion was filed a statement of S. B. Elkins, J Houghton, M. Ashurst, Attorney General of New Mexico, a letter of S. B. Elkins, of January 4, 1869, to F. D. Wheaton, and F. D. Wheaton's reply of January 16th, 1869. On January 27, 1869, the Supreme Court of the Territory of New Mexico, because of the Chief Justice and one of the Associate Justices having been of counsel in the case, no decision of said motion was made, but the motion and proof in its support was ordered to be placed of record, and a certified copy transmitted to the Supreme Court for such opinion, order or judgment as the Supreme Court might see fit to make in the case.

At the January Term of the Supreme Court of the Territory of New Mexice, 1870, notwithstanding the motion and proof in its support, had been transmitted to the Supreme Court for its action, the motion was again presented to the Supreme Court of the Territory of New Mexico, with the same proof in its support was filed, and on January 22, 1870, the Supreme Court of the Territory of New Mexico granted the motion, and made the *nunce pro tince* entry, showing that the United States District Attorney had asked for an appeal at the January Term 1867, and that the clerk had omitted to enter it on the record, and thereupon the *nunce pro tince* entry was made, and the motion for appeal sustained. See Printed Record p. 102 to 109.

This case of appeal having been docketed in the Su-

preme Court, a motion was made by the appellees to dismiss the appeal, and the motion was overruled by the Court, see 10 Wall. p. 424. As this motion may be considered as *res-judicata*, and not now before the Court as a part of the record subject to review by the Supreme Court, and is only alluded to in this statement to complete the brief statement of the facts contained in the record.

The attention of the Court is now called to a consideration of the questions of error, supposed by the United States to exist in this record. This Court will see by reference to page 15 of Printed Record, containing copy of the original petition, that as inducement to make the grant, the petitioners made three propositions:

1st. To construct two wells with tanks on the Jornada for the relief and aid of travellers.

2d. To establish two factories in which criminal sentences by the authorities were to be received.

3d. To introduce modern machinery in the shortest possible time, not exceeding five years, and provide two field pieces and arms for workmen, for defense against the Indians then in revolt.

On page 96, Printed Record, it will be seen, that the Committee of the Departmental Assembly, to whom was referred the petition, recommended that the conditions be ignored and tacitly disregarded by the Governor, and that the grant be made without the conditions referred to, and the grant be made "for the purpose of opening "wells and planting the lands, as far as their means will "admit, without any exclusive right of pasture, and that "the foreigner, Miguel Houck, should be excluded." It will be seen by reference to page 16, Printed Record, that the Departmental Assembly concurred in the report of

the Committee, and the grant was assented to on the said 10th day of January, 1846, without attaching any conditions to it—merely stating that the grant was made "for the purpose of constructing wells and cultivating "the lands, as far as their means would permit, without "being entitled to an exclusive right to the pasture." It will at once be seen that a mere declaration of the purpose to which the grantees were to devote the land granted could not be construed into a condition precedent, for the nonperformance of which the grant would become void.

With this brief statement of the main facts in the case, as shown by the record, the attention of the Court is now invoked to a careful consideration of the points of law, the argument and authorities in their support, applicable to the facts disclosed in this record, and presented to this Court for consideration and review.

An investigation of the questions at issue in this case will disclose but few points about which any question of fact can arise, and the only points of any material importance to consider are pure questions of law.

Before entering into a discussion of the questions of law appearing on the face of the record, it is important to ascertain and define the nature of the title, in order that such decisions of the Supreme Court only as are suitable to the nature of the title in this case may be cited for consideration. It must be clear and undoubted that a title which was good and perfect under the Government making it must be held valid and protected under another government into whose hands it falls by contract, treaty or warlike acquisition. In the case of the "United States vs. Perchman," 7 Pet. Reps., p. 37, it was held, that—

"That the people changed their allegiance; their re-"lations to their ancient sovereigns is dissolved, but

"their relations to each other, and their rights of prop-
"erty remain undisturbed."

In the case of the "United States vs. Aredondo," 2 Pet. Rep., p. 601, it was held, that—

"Congress in their legislation, had adopted as the basis
"of all their acts, the principle, that the law of the pro-
"vince in which the land is situate, is the law which gives
"efficacy to the grant, and by which it is to be tested,
"as to whether it was property at the time the treaties
"took effect."

This title was given by Mexico, to her people, prior to the date of the treaty of Guadalupe Hidalgo, of February 2, 1848, between the United State and Mexico, under which treaty the province of New Mexico was transferred to the United States, and was called the Territory of New Mexico. In the case of "Hancock vs. McKinney, 7 Texas Rep., p. 384," the Supreme Court of Texas give with great clearness, the distinction between a perfect and an imperfect title. The Court says—

"Beyond the extension of title by the Commissioners
"under the Colonization Laws, no further act was neces-
"sary to consummate the fee in the grantee. That this
"fee was subject to a defeasance, if certain conditions
"were not performed, did not reduce it to that class of
"incipient equities which required recognition before
"they could be perfected into a patent, or become the
"foundation of an action. The law nowhere indicates
"that posterior to the performance of these conditions,
"a more perfect title or assurance will be issued by the
"Government, or that any confirmation or further title
"is necessary."

If this doctrine be correct, its application to the title of Vigil in this case will show that it is a perfect title, and divested of all inchoate or equitable elements re-

quiring further political or judicial action to make the title perfect. In this case, when under investigation before the Surveyor General of New Mexico, the only objection to the confirmation of the grant was the alleged non-performance by the grantees of the conditions attached to the grant, which non-performance of said conditions was urged as sufficient reason to withhold the confirmation of the grant. Conditions attached to a grant are usually precedent, concurrent, or subsequent, and the consequences resulting from the non-performance of these conditions are widely different. Now an examination by the Court of the alleged conditions attached to the grant of Vigil will show that all of them are conditions subsequent. In this case a good and sufficient excuse is presented by the order of the proper authorities to stop the performance of the conditions until the question of a disputed boundary, on the north, between the heirs of Pedro Armendaris and the heirs of Francisco Kavier Chauses, had been determined. Certainly no forfeiture of the rights of Vigil ought to occur for not complying with conditions which the proper authorities forbade him to comply with, and before that prohibition was released the change of sovereignty over New Mexico rendered a compliance with said conditions unnecessary. The case of the "United States vs. Freemont," 17 How., p. 542, is a leading case upon the effect of the non-performance of conditions subsequent attached to a grant. In that case, in the able opinion of the Supreme Court, the Chief Justice carefully reviews, the decisions of the Supreme Court under the Louisiana and Florida concessions, and the inapplicability of their decisions to cases arising under the treaty of Guadalupe Hidalgo is clearly pointed out, and upon the subject of the non-performance of conditions subsequent in the grant the following is the clear and impressive language of the Court:

"Regarding the grant to Aleavado, therefore, as giving "him a vested interest in the quantity of land therein "specified, we proceed to enquire whether there was any "breach of the conditions annexed to it during the con- "tinuance of the Mexican authorities which affect his "right and vested the title in the Government. The "main objection on this ground is, the omission to take "possession; to have the land surveyed; and to build a "house upon it within the time stated in the conditions. "It is a sufficient answer to this objection to say, that "negligence in respect to these conditions, and others an- "nexed to the grant, does not, of itself, always forfeit "his right. It subjects the land to be denounced by an- "other, but the conditions do not declare the land for- "feited to the State upon the failure of the grantee to "perform them.

"The chief object of these grants was, to colonize and "settle the vacant lands. The grants were usually made "for that purpose, without any other consideration, and "without any claim of the grantee on the bounty or jus- "tice of the Government. But the public had no inter- "est in forfeiting them, even in these cases, unless some "other person desired and was ready to occupy them, "and thus carry out the policy of extending its settle- "ments. Thus, conditions seem to have been intended "to stimulate the grantee to prompt action in settling "and colonizing the land, by making it open to appropri- "ation by others, in case of his failure to perform them. "But as between him and the Government there is noth- "ing in the language of the conditions, taking them all "together, nor in their evident object and policy, which "would justify the Court in declaring the land forfeited "to the Government when no other person sought to "appropriate them, and their performance had not been "unreasonably delayed; nor do we find anything in the

"practice and usages of the Mexican tribunals, so far as "we can ascertain them, that would lead to a contrary "conclusion."

If it is possible for the adjudications of a court to settle and place beyond dispute a question, this decision in the Fremont case shows that the non-performance of the conditions of the grant to Vigil did not divest him of his title, even if no good excuse had been given by him for the omission to perform them.

The Court will readily see that in this case the original title papers were executed according to law, and by the proper officers intrusted with the power and the right of disposing of the public domain. The petition for the grant is in proper form, it was referred to the Departmental Assembly, acceded to by them, and the proper judicial officer was directed to place the grantees in actual possession of the land granted, and such possession was actually given, and duly reported to the granting authority, and the action of the judicial officer, putting the grantees in possession was approved and filed with the title papers, as a portion of the title in the case. Can there be a single doubt, that the Republic of Mexico, by these solemn acts, parted with her title to all the land mentioned within the boundaries of the grant, and vested a perfect title in the grantee mentioned in said title deeds? Such being the condition of this grant, at the date of the treaty of Guadalupe Hidalgo, this land did not pass to the United States under said treaty, nor did the United States by that treaty, or in any other manner, acquire any title to said land, nor any right to assert any title to it, or to impair, invalidate, or vacate the perfect title existing in the grantees at the date of the treaty. If it be true, as it undoubtedly is true, that this title was a perfect title at the date of the treaty, the grantees were under no obligation to present it to the

Surveyor General of New Mexico for his action. In the case of "Mintan vs. Broner," 24 Cal. R., 644, it was decided that—

"Mexicans whose titles to lands by grant from Mexico "or Spain were perfect at the time of the acquisition of "California by the United States, were not compelled to "submit them for confirmation to the board of commis- "sioners, appointed under the act of Congress of March "3, 1851, nor did they forfeit their lands to the govern- "ment by a failure to present their claims for confir- "mation." "Holders of titles to lands which were perfect "at the date of the treaty could, if they so elected, submit "them to be passed upon by the commissioners, but were "not bound to do so." When the republic of Mexico, by the disasters of unsuccessful war with the United States, was compelled to part with a large portion of her territory and people, endeared to her by many glorious memories of the past, and with fearful forebodings for the future, she naturally struggled with heroic fortitude to place over her people thus transferred to a new sovereign all the safeguards to their life, liberty, property, and religion, held binding on men, and sacred among all just and intelligent nations, and it was to effect this purpose and secure this protection to life, liberty, property, and religion, that the 8th and 9th articles of the treaty of Guadalupe Hidalgo were agreed upon, as follows:

"Article 8th. Mexicans now established in Territories, "previously belonging to Mexico, and which remain "for the future within the limits of the United States, "as defined by the present treaty, shall be free to continue "where they now reside, or to return at any time to the "Mexican Republic, retaining the property they possess "in said Territories, or by disposing thereof, and remov- "ing, the proceeds whenever they please, without their "being subjected, on this account, to any contribution,

"tax, or charge whatever. * * In said Territories, "property of every kind, now belonging to Mexicans not "established there, should be inviolably respected. The "present owners, the heirs of these, and all Mexicans "who may hereafter acquire said property by contract, "should enjoy with respect to it guarantees equally ample "as if the same belonged to citizens of the United States."

"Article 9th. Mexicans, who in the Territories afore-"said, shall not preserve the character of citizens of the "Mexican Republic, conformably with what is stipulated "in the preceding article, shall be incorporated into the "union of the United States, and be admitted at the "proper time (to be judged of by the Congress of the "United States) to the enjoyment of all the rights of citi-"zens of the United States, according to the principles "of the constitution, and in the meantime shall be main-"tained and protected in the free enjoyment of their "liberty and property, and secure in the free exercise of "their religion without restriction." See Statutes at Large, v. 9, pp. 929–'30.

Has Congress or this court the right to insert into and engraft upon this treaty, that they shall be protected in the property they possess, provided they do not possess over eleven square leagues, or over ten thousand dollars worth of property? To attempt to graft any such proviso upon this treaty by legislative action, or judicial construction, by one of the interested parties, would be a stain upon the nation's faith and honor, and a reproach upon the natural rights of men under all intelligent and civilized governments of the world.

So far as California was concerned, steps were taken by Congress in 1851 to provide for the investigation and confirmation of the private land claims in California by the organization of a commission for their adjudication

with the right of appeal to either party to the District and Supreme Court, but the holders of private land claims in New Mexico were neglected and forgotten, until Congress passed an act on the 22d of July, 1854, vesting the authority to investigate, decide, and report upon these titles in New Mexico, and report them to Congress for confirmation when found valid and *bona fide*.

The 8th section of that act is as follows:

"Section 8. That it shall be the duty of the Surveyor "General, under such instructions as may be given by "the Secretary of the Interior, to ascertain the origin, "nature, character, and extent of all claims to lands under "the laws, usages, and customs of Spain and Mexico, and "for that purpose may issue notices, summon witnesses, "administer oaths, and do and perform all other neces- "sary acts in the premises. He shall make a full report "on all such claims, as originated before the cession of "the Territory to the United States by the treaty of "Guadalupe Hidalgo of 1848, denoting the various grades "of title, with his decision as to the validity or invalidity "of each of the same, under the laws, usages, and cus- "toms of the country before the cession to the United "States, and shall also make a report in regard to all "pueblos existing in the Territory, showing the extent "and locality of each, stating the number of inhabitants "in the said pueblos respectively, and the nature of the "title to the land. Such report to be made, according "to the form which may be presented by the Secretary "of the Interior, which report shall be laid before Con- "gress for such action thereon as may be deemed just "and proper, with a view to confirm *bona fide* grants and "give full effect to the treaty of 1848, between the United "States and Mexico, and until the final action of Con- "gress on such claims, all lands covered thereby shall be "reserved from sale or disposal by the Government, and

"shall not be subject to the donations granted by the "previous provisions of this act." See v. 10 Statutes at Large, p. 309.

The title to Vigil was, under this law, presented to the Surveyor General for confirmation and by him rejected. An appeal was taken by Vigil from this decision, and the case was referred to Congress for determination, and after the facts and law of the case had been fully considered by Congress, Congress passed the 5th section of the act of June 21, 1860, giving Vigil the right to sue in the Supreme Court of the Territory of New Mexico, with the right of appeal to the Supreme Court of the United States, to either party, if applied for within one year. The attention of the court is called to a careful consideration of the 5th section of said act, found on page 6 of the printed record. It will be at once seen that this act does not confine the court in adjudicating this title to the rigid rules and strict technicalities of the colonization law of 1824 and the regulations of 1828, but in determining this case the court is required to be guided by the treaty of Guadalupe Hidalgo, the laws of nations, the usages and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable. Under this act, if this title is protected by the treaty; if it is good by the laws of nations; if it is perfect under the decisions of the Supreme Court, and its full and complete equity is plain and obvious, it is a duty which the court will cheerfully perform to recognize and confirm it. It will be seen on the examination of this case, before the Surveyor General of New Mexico and in the Supreme Court of the Territory, no question was made as to the genuine and *bona fide* nature of these title papers, nor as to the fact of possession having been given, as stated. The only point made was, that non-compliance with the conditions of the grant vacated the

title given and authorized the United States to take and appropriate to public use all this land. Is it proper, or the practice in an appellate court to permit the introduction of new points, not made or put in issue in the court below? It is now sought in this court to defeat this title by the alleged fact that the grant is larger than the Colonization law of 1824 authorized, and hence void, and not entitled to recognition by the court in any manner. Although not called upon by any issue in the record to contest this point, we will proceed to show that provisions of the Colonization law of 1824 and the regulations of 1828, do not affect this title in any manner, nor are they properly applicable to its adjudication.

The court, in considering the Colonization act of 1824, will look at the whole law, and construe it according to its general intent and purpose. This general purpose was to restrict the granting of land to foreigners, as to locality and quantity, so as to exclude foreigners from settling up the sea coast and frontiers of the Republic of Mexico, and to acquire all these strongholds in large quantities to the danger of the Republic, in the event of foreign war. The whole scope and intent of the act of 1824 was to regulate and limit grants to foreigners, and was not binding, nor intended to be binding, on grants made to Mexican citizens of the Republic. The idea that the Republic of Mexico, in regulating donations of her public domain to colonists from abroad, intended to limit her own sovereignty over her own public domain to her own people, is not sustained by the spirit, intent, or object of the law.

The daily practice and usage of the Republic of Mexico was to grant her own people the lands petitioned by them within certain metes, and bounds, and natural land-marks, without the slightest regard to quantity or number of leagues mentioned in the Colonization law of 1824 and regulations of 1828.

It is not believed, under the proper construction of the law, applicable to such grants, that they can be curtailed and reduced, and tested by such law. It will be seen by the court, and is shown by the proof in the record in this case, that it was not the usage and custom of the granting officers in New Mexico to confine themselves to any number of leagues. An examination of all the grants confirmed in New Mexico, numbering about sixty, it will be found that less than ten of them are made for any given and definite number of leagues. In the distant province of New Mexico, the universal custom, as proven by Doniciono Vigil and Augustine Duran, was to grant lands by natural boundaries, without regard to leagues, and such grants have uniformly been held good and valid by the Republic of Mexico, and the idea never entered the mind of the Republic of Mexico, that after the United States, by solemn treaty, stipulated to protect the property which the people of New Mexico possessed at the date of the treaty, would legislate or judicially construe into the treaty, as one of the interested parties, a proviso that such protection should only be given where the quantity of land granted did not exceed eleven square leagues to each of the grantees. What would be thought of the United States if were it to require the people of New Mexico to produce the Spanish doubloons possessed by them at the date of the treaty of Guadalupe Hidalgo, and after weighing them carefully in their patent right scales, should say to the owners of the doubloons, that the stupid coiners who made them did not understand the law of Mexico, and made them much heavier than the law authorized; for which reason we will just clip off the surplus weight of your doubloon according to our scales, and you can have the remainder after our clippings have been effected! And is not land as sacred as money? Would it look any better, or be any more just, to put the judicial scissors of construction at work on the private titles and land grants

given by the generosity of another government to her heroic frontiersmen, who had planted the banners of civilization in the valley of the Rio Grande over eighty years before our Pilgrim Fathers landed on the Rock of Plymouth?

On examination of the regulations of 1828, under the Colonization Law of 1824, it will be seen, that the 9th section of said regulations requires these grants to be reported to the Supreme Government of Mexico quarterly, and as the United States was in possession and control of New Mexico from the 18th day of August, 1846, to the date of the treaty of Guadalupe Hidalgo, February, 2, 1848, both governments were presumed to be well informed as to the number, size and quantity of land specified in the title deeds on record and open to investigation and inspection of both governments, and if, with this knowledge before them, a treaty was executed to protect all property possessed at the date of the treaty without limitation as to quantity; has one of the governments a right to construe into the treaty any such limitations?

It has been the uniform decision, made in many cases by the courts of California, that a grant to a native of land within the ten literal leagues of the coast was valid, and the prohibition in the Colonization Law of 1824 should only be held to operate on grants made to foreigners. The decisions of the highest courts in Texas have been, that all such grants were illegal and void, and the Supreme Court sustained the ruling in both States, upon the doctrine, that rights of great value had become fixed under these decisions, and it was better to confirm than to reverse them.

The Supreme Court of New Mexico has held that such grants are valid, and should be respected. A decision destroying the right title of the people to their lands in

excess of eleven square leagues in New Mexico would be more ruinous and destructive than a hostile invasion of an army bent on pillage. Many of these grants have passed into the hands of innocent purchasers for a valuable consideration, and the owners have expended upon them hundreds of thousands of dollars; and to now hold that their title was worthless to a large portion of their property would be anything but equitable or just. The right to curtail these grants on account of the quantity of land being excessive, was fully and ably discussed and decided in the case of the "United States vs. Sutherland," 19 How., 363, in the Supreme Court. "The courts of "the United States have no discretion to reject or curtail "the grants, or defeat them by stringent technical rules "of construction upon the ground that the quantity of "land is excessive." The question of the effect of excess in the quantity of land granted upon the validity of the grant was fully considered in the cases of "Hancock vs. McKinney," 7 Texas, 384; "Swift vs. Howard," 9 Texas, 263; "Overton vs. Campbell," 5 Haywood, Tenn., Reps., 106; and "White vs. Bumley," 20 How., 247. It was held in the above cases that where "a grant to a col-"onist contained two leagues when he was entitled to "but one. The grant contains two leagues and more, of "pasture land, and for this reason it was insisted on the "trial that it was fraudulent and void. A regular grant "(that is completed title made by those exercising the "proper political power to grant lands) is not open to "this objection by an opposing claimant setting up a "younger title. It was not null for the excess." See "White vs. Bumley," 20 How., 248; "Mancey vs. O'-Conner," 23 Texas, 240; "Edward vs. James," 7 Texas, 372.

In the case of "Swinger vs. Young," 3 Pet. 340; "Johnson vs. Smith," 21 Texas, 722 and Mancey vs.

O'Conner, 7 Texas, 372, it was held, "that the fraud which authorizes the annulling of a grant in any case is not legal and technical but actual and positive fraud in fact committed by the person who obtained it." In the title to Vigil et al. not the slightest foundation exists to suppose the grant was in the remotest degree tainted with any actual or positive fraud committed by the grantees. In this case the petition of the applicants was in due form of law, addressed to the proper granting officer, the Governor of New Mexico, and approved by the Departmental Assembly and the possession of the land duly given by the proper officer according to law, and such possession duly reported and filed with the title papers in the case. The boundaries mentioned in the petition, grant and act of possession, are permanent and well known natural objects, plainly visible and easily recognized and found, and it must be presumed that the character of the land, and its supposed quantity, must have been quite as well known to the Governor and Departmental Assembly at the time of making the grant, as it was to the applicants for the grant; and not the smallest evidence of fraud can be found anywhere in the proceedings resulting in the grant. The evidence taken in this case shows the land to be of little value, consisting mostly of a desolate plain, destitute of water and unfit for cultivation, and of large extent; and the question now is, will the court establish the principle of refusing to confirm *bona fide* and perfect titles, protected by treaty and the laws of nations and decisions of the Supreme Court, if large, and only confirm such as are small. If the Republic of Mexico saw fit for years to acquiesce in the power and authority of the Governors and Departmental Assembly of her distant provinces to make grants without reference to the number of square leagues to one person, and did not see fit to annul, reform or curtail them, but on the contrary, expressly provided in the treaty of

Guadalupe Hidalgo for their protection as property; what legal or equitable right have we to remodel, reform or curtail them to suit our notions of what they ought to have been under our view of the rightful and proper execution of foreign laws by foreign officers intrusted with the duty of interpreting and exercising them. Are we to assume twenty-five years after these grants were made by a foreign government under their laws, which they were called upon to execute, that the officers making them did not understand their own laws, nor legally apply them to the disposition of the public domain which they were authorized to dispose of to their people? Valuable and vested rights have attached under these grants; these grants are respected and held valid by the government making them for years after their execution, and then protected by a solemn treaty, and it is neither equitable, legal or just for another government to assume the right to remodel, reform, readjudicate and vacate them. In the absence of proof of actual and positive fraud upon the establishment of a perfect and *bona fide* grant by the Republic of Mexico, the title to all the lands within the boundaries of the grant must be regarded as *res adjudicata*, and as vesting in the grantee such an absolute and perfect title as cannot be rightfully divested or annulled by another government under whose jurisdiction the land has fallen by conquest or treaty. The Supreme Court of the United States, in considering the operation of the treaty of Guadalupe Hidalgo upon titles to land given by Spain and the Republic of Mexico, in the case of the United States vs. Sutherland, 19 How., 363–365, say that "the United States have "bound themselves by a treaty to acknowledge and pro- "tect all *bona fide* titles granted by the previous govern- "ment." In the case of the "United States vs. Moreno," 1 Wall., 400, Board vs. Tedery, 3 Wall., 478–491, the "Supreme Court held that, "the cession of California to

"the United States did not impair the rights of private "property. These rights are held sacred by the laws of "nations and protected by the treaty of Guadalupe Hi- "dalgo."

It will be seen by reference to the act of July, 22, 1854, that the eighth section of said act gives to the land titles in New Mexico the same protection as was given in California by the act of March 3, 1851. In the case of the United States vs. Moreno, 1 Wall., 400, it was held by the Supreme Court, "that the said act "of Congress recognizes both legal and equitable "rights, and should be administered in a liberal spirit." The 8th section of the act of July 22, 1854, and the 5th section of the act of June 21, 1860, under which this suit was brought, in the Supreme Court of the Territory of New Mexico, contemplate the recognition and confirmation of equitable rights to land, and gives the court express power to hold them valid by usage and custom, when not made in technical conformity with the provisions of the Colonization law of 1824 and the regulations of 1828.

In the case of the "United States vs. Fremont, 17 How., 542, the grant to Alvarondo was encumbered with four express and specific requirements, all of which were expressly violated or left wholly unperformed; and yet the Supreme Court rightly refused to annul the title, but recognized and confirmed it. In this case of Vigil, Rivera, and Houck, not a single condition of the grant was violated, for which a sufficient and legal excuse does not appear, yet it is insisted that this title be annulled and invalidated because of a supposed mistake in the quantity of land authorized to be given, made by the granting officer intrusted with the authority to make said grants. Is it not more reasonable and just to suppose that this grant was made in conformity with the laws,

customs, and usages of the Republic of Mexico, at the time it was made, as understood and executed by said granting officers, than to conclude that said grant is illegal and void for not having limited the quantity of land granted to the certain and definite amount of eleven square leagues? The Supreme Court will see that when the granting officer gave a title to square leagues in any number, the term "*sitio*" was used for the reason that the third Article of the Colonization Laws of 1823, January 4th, of Mexico, provides that: "The measurement "of land shall be the following: establishing the *vara* "at three geometrical feet; a straight line of five thous- "and varas shall be a league; a square each of whose "sides shall be one league, shall be called a '*sitio;*' and "this shall be the unity of counting one, two, or more "'*sitios;*' five '*sitios*' shall comprise one '*haciendo.*'

It will thus be seen that when it was the purpose and intent of the granting officer to grant any number of square leagues, the title papers called for so many "*sitios*," but when it was the purpose and intention to grant a certain specific tract of land without regard to quantity, the description of the land granted was given by certain known, visible, and permanent landmarks, and upon the delivery of possession according to law under said grant, all the lands within the boundaries mentioned within the grant, at once ceased to be public domain, and became the private property of the grantee. It will thus be clearly seen that this grant at the date of the treaty of Guadalupe Hidalgo, being no part of the public domain of Mexico, no title, legal or equitable, was transferred or vested in the United States under said treaty of Guadalupe Hidalgo, and the grant continued to remain the private property of the grantees, protected by the laws of nations, the treaty of Guadalupe Hidalgo, and the decisions of the Supreme Court as a perfect title, secure

from legislative or judicial confiscation or annullment, and needing no political or judicial action to protect or sustain it. That such is the status of this title before the court, is shown by the uniform decisions of the courts of this country.

The case of the United States vs. Hartwell, 22 How., 286, is generally cited and relied upon as deciding that the power of the Governor to grant over eleven square leagues under the Colonization Law of 1824 and Regulations of 1828 does not exist. It is worth while to consider with some care the facts in the case of Hartwell, and if found widely different from the facts existing in the Vigil case, now before the Supreme Court, the force of this decision as a precedent to apply to this case is wholly destroyed because the facts are not analogous in the two cases. Hartwell had obtained a grant of five leagues of land in Lower California, and a further grant of eleven leagues in Upper California,—making sixteen leagues in all; both these grants were presented to the Departmental Assembly for approval, and the Departmental Assembly reduced the grant in Upper California, made by the Governor, from eleven to six leagues, and the Supreme Court state that the power of the Governor over the public domain, not being exclusive but requiring the concurrence and approval of the Departmental Assembly, in case that the approval was not given to the entire quantity granted by the Governor that the action of the Departmental Assembly prevented the grantees from acquiring a title to any greater number of leagues than the Departmental Assembly, as a co-ordinate granting power, had assented to in their action on the grant. It is not to be presumed that if the Departmental Assembly had seen fit to approve and confirm both these grants, and possession been given the grantees, that the Supreme Court would have undertaken to curtail the

quantity granted or refused to recognize the title thus held valid and confirmed by the Departmental Assembly in support of the Governor's grant. In the case of Vigil there was no refusal to assent to the grant of the Governor, but on a full investigation and report, and with a full knowledge of the boundaries of the proposed grant, the Departmental Assembly assented to and confirmed the grant made by the Governor, and judicial possession was given the grantees according to law. Had the Departmental Assembly of New Mexico refused to confirm this grant as made, and directed that it only be confirmed for the quantity of eleven square leagues, then if Vigil should come before this court asking the confirmation of his title on the Governor's grant, in defiance of the action of the Departmental Assembly reducing it to a given number of leagues, the decision in the Hartwell case might with some propriety be cited as a precedent for application to the Vigil grant. But here the action of the Governor was sustained and approved by the Departmental Assembly, entrusted by law with the right to confirm or refuse to confirm the grant of the Governor, and also with the power to reform or restrict or modify the grant of the Governor. When the Departmental Assembly expressly confirmed the grant for all the land mentioned in the title papers as having been granted, the title of the grantees became perfect and absolute, and entitled to confirmation by the court.

In the case of Higueras vs. The United States, 5 Wallace, 827, it was held "That when the grant is made by "specific boundaries the grantee is entitled to the entire "tract described."

In the case of The United States vs. Yerba, 1 Wallace, 412, it was held that "the absence of the usual condi- "tion of a colonization grant, requiring cultivation and "inhabitancy, does not impair its validity."

If the omission of what the law requires will not invalidate the grant, is it proper to invalidate it by putting in it something in violation of the law?

In considering grants in California made within ten leagues of the coast, the Supreme Court recognized the binding force of the uniform decisions of the Supreme Court of California, that such grants are valid if made to natives, and not foreigners.

Similar grants in Texas have been uniformly held to be void, no matter to whom made, by the Supreme Court of Texas, and their rulings have been sustained by the Supreme Court, upon the very reasonable ground that a ruling of doubtful legality, after it has been permanent and long continued and important private rights have been settled by it, ought not to be disturbed. How stands the case in New Mexico? From its earliest history, during the rule of Spain, grants were frequently made without limitation as to the number of leagues; the practice continued without interruption in the Republic of Mexico up to the date of the treaty of Guadalupe Hidalgo; the Governor and Departmental Assembly continued to make grants largely in excess of eleven square leagues; and the Republic of Mexico, from 1824 to 1848, near a quarter of a century, acquiesced in the grants thus made without vacating them, or attempting to vacate them, or to make any re-grant of the land, and is it not asking too much of any honest and just nation to confiscate and invalidate them now if made in violation of our notions of their laws?

Mexico for years, with a full knowledge of the locality, boundaries, and size of these grants, considered them legal, valid, and binding on the Mexican nation, and they have passed into the hands of *bona fide* purchasers, who have expended millions upon them. Now for another

government, twenty-five years after these grants have been held and occupied by the grantees or their vendees under them, to assume to invalidate or annul them would be a foul stain upon the faith, honor, and justice of a great nation.

The acquisition of New Mexico gave the United States one hundred and fifty-four millions of acres of land, and when all the private lands are confirmed and segregated in accordance with the boundaries mentioned in the title papers, it will be found that less than ten millions of acres has been granted by Spain and Mexico to her heroic pioneers who planted the banner of civilization and religion in that distant and dangerous land. Is this great republic, whose reputation for honor, justice, and good faith is confided in throughout the civilized world, going to enter upon a crusade against the private land claims of New Mexico, even if the government of Mexico did, from ignorance of her own laws and their rightful legal execution, generously grant to her people more of her own land than we consider authorized by her laws as we understand and interpret them? The idea that the imperial government of Mexico during its three years' existence, or that the Republic of Mexico, at any time since its establishment, ever imposed by law any restriction upon the quantity of land she might see fit to donate to her own people, is wholly unsupported either by the law, practice, usage, or custom of the Mexican government in the distribution of her public domain to her own people. Spain, during her rule in the New World, disposed of the public domain conquered and held by her without the slightest reference or regard to any number of leagues whatever. The imperial law of colonization, published in Mexico, January 4th, 1823, authorized the executive of the empire to distribute the public domain without regard to quantity. The 8th article provides that there

shall not be given to colonists, whose occupation is farming, less than one *labor*, and to colonists whose occupation is stock raising not less than "one *sitio*," which is a square league. The 17th article authorizes each *empresario* introducing two hundred families into the empire to acquire title to nine *haciendas*, equal to forty-five square leagues, and six *labores*.

This act of 1823 is called a general law of colonization, and its whole object, intent, and purpose was to regulate the distribution of the public domain to foreigners, without making any change or alteration in the law as to the granting of lands to natives. The idea that such a law, made for a particular class of foreigners imigrating for settlement to the Empire, should be construed as imposing upon the Empire restrictions or prohibitions in the disposal of her public domain to her own people, is too absurd to require any serious argument or discussion. The laws of the United States prohibit the acquisition of a title to land by a foreigner under its homestead or pre-emption enactments until he has disclosed his intention to become a citizen of the United States, and the quantity is then limited to one hundred and sixty acres; but does that law, made to regulate the rights of aliens, deprive the Government of the United States of the power and right of giving to Lafayette or Kosciusko a hundred thousand acres of the public domain, or the great Pacific Railroad to the Pacific coast fifty millions of acres. It is not reasonable to suppose that the Republic of Mexico ever imposed upon herself or her agents the inability to donate to her own people as much of her own public domain as might seem just or proper to her in the donation of what was hers, not ours.

But if the Republic of Mexico by mistaken interpretation of her own laws, or by the illegal and indiscreet execution of them by her authorized agents, gave her citizens

more land than was legally due them, and the mistake was well known and acquiesced in by the Republic of Mexico, without objection or complaint for many years, as just and legal, has another government, 20 years after these grants were made and occupied by the grantees, the right to annul, destroy, or remodel them, to suit its notions of what was the proper interpretation and execution of a foreign law? It is certainly a matter of great and grave doubt at least, whether the act of 1824 applied to all grants made by Mexico, or only to grants made to foreigners coming to Mexico to settle, and asking for land to cultivate. It has been repeatedly decided that "in the construction of a doubtful law the contem-"poraneous construction of persons appointed to execute "it is entitled to great respect." See the following cases on this point: Edwards vs. Darby, 12 Wh., 206; S. P. Ross vs. Burband, 1 Peters, 666; United States vs. State Bank of North Carolina, 6 Pet., 39; Grant vs. Rayman, 6 Peter, 218; United States vs. MacDaniel, 7 Pet., 1; United States vs. the Recorder, 1 Bl. C. C., 218; United States vs. Lytle, 5 McL.

9. It has also been decided that—

"The statutes of one State or county, when they be-"come the subject of adjudication in another, are to re-"ceive the same construction that is given them in the "courts of the former." See Hamperville Copper Co. vs. Sterling, 1 West L., Mo.; Elmendorf vs. Taylor 10 Wh. 153; Smith vs. Conday, 1, H. 28.

It was the constant habit of the Governor of New Mexico and Departmental Assembly to dispose of lands in New Mexico in quantities greatly in excess of eleven square leagues, and this action was assented to and acquiesced in by the uniform practice of the government of Mexico from 1824 to 18th August, 1846, when Gen.

Kearney took possession of New Mexico for the United States. For us now to question and set aside the construction of a foreign government upon her own laws would not be extending to them any respect. As these grants were well known to the Government of Mexico as being in excess of eleven square leagues, and well known to the Governor who made them, and to the Departmental Assembly which confirmed them, without restriction as to the quantity of leagues granted, to conclude that they were mistaken in the construction of the act of 1824, and proceed to annul these titles and destroy the vested rights attaching under them would bring such ruin upon private rights as was not intended by the laws of nations, and the treaty of Guadalupe Hidalgo, and the act of Congress of 22d July, 1854, providing for the recognition and confirmation of all "*bona fide*" titles, whether perfect or imperfect, choate or inchoate, legal or equitable, made in good faith by Mexico under her interpretation of the laws, usages and customs of Mexico in the disposition of her public domain. It is consistent with fair and impartial justice for the judicial tribunals of the United States to set as a court of error upon the proper construction and execution of the laws of a sister Republic, under which the vested rights of her people originated, on the ground of assumed errors or mistakes in the proper construction and execution of her own laws for the disposition of her own property? If it were true that the authorities of Mexico for a long series of years erred in granting lands to the people of Mexico in larger quantities than authorized by law, the grant was not void, but only voidable by the government of Mexico, and if Mexico did not see fit to annul and avoid it as the only party in interest and injured by the transaction, can it be required of another government to do, to the ruin and destruction of private rights, what the former government omitted and refused to do?

It is a legitimate and fair presumption that what the Governor of the Province of New Mexico and the Departmental Assembly of the Province did in the making of this grant, and the placing of the grantees in judicial possession of the land granted, was done legally and within the scope of their rightful authority. See Fuentes vs. United States, 22d Howard, 443; United States vs. Peralto, 19 Howard, 343.

Spain occupied and governed the Province of New Mexico long before our Pilgrim Fathers landed at the Rock of Plymouth to occupy and civilize the newly discovered continent of North America. The Indians found in New Mexico on the advent of the Spaniards were subdued and after a time revolted and were again subdued partially, and from the first settlement of the European race in New Mexico an irrepressible conflict has been going on without final success on either side. The Spanish conquerors, like our Pilgrim Fathers, soon established their title to the lands in an effectual and satisfactory manner to themselves and their sovereign by the adoption of a platform of property, consisting of two resolutions, short, logical, and expressive. 1st. Resolved, That the lands belong rightfully to the People of the Lord. 2nd. Resolved, That we are the People of the Lord, and hence these lands are ours. The Spanish authorities were authorized to grant and did grant to individuals an extent of country sufficient for large States and extensive Provinces, and furnished the grantee with troops to aid him to conquer and hold them. The King of England exercised the same power and claimed the same right over the lands actually or constructively reduced to his possession. Stimulated by the success of the United States in dissolving their dependency upon the Old World, and imitating their example, the people of Mexico, on the 27th day of September, 1821, declared

their independence of Old Spain, and by the 21st of December, 1822, their separation and independence had become complete. The old sovereignty had passed away, and the new sovereignty was established over New Mexico, but the laws regulating the granting of lands remained the same until the new government considered it proper or prudent to alter or change them.

The Colonization Law of the Empire, passed on the 4th of January, 1823, will be found on pages 617, 618, 619 and 620 of Rockwell's Spanish and Mexican Law. A careful consideration of the Imperial Colonization Law of 4th January, 1823, from Article 1st to 32nd will demonstrate that no allusion is made in the act to grants to native Mexicans, except the 18th Article, which says, "Natives shall have a preference in the distribution of "land; and particularly the military of the army of three "guarantees, in conformity with the decree of March 27, "1821, and also those who served in the first epoch of the "insurrection." It will also be noted by the Court that in this preference of "natives" to "foreigners," in the distribution of the public domain, the act omits to say that such preferred distribution to natives shall be made in accordance with the provisions of that law, or be subject to its conditions or restrictions. By reference to the 8th and 9th Articles of this act of January 4, 1823, it will be clearly seen that no *maximum* limit was placed upon the quantity to be granted, and to one individual engaged in farming the *minimum* was one "*labor*," and if engaged in "stock raising" there was to given not less than one "sitio." It must be manifest to the Court from a consideration of the entire law of January 4, 1823, that it had no operation on the grants of land to natives, except to direct their preference in the distribution of lands over foreigners desiring to obtain title under the Colonization law passed for their benefit.

The attention of the Court is now called to a careful consideration of the National Colonization act of the 18th of August, 1824, on page 451, of Rockwell's Spanish and Mexican law. The Court will see that this act of 1824, is in fact a deed, cession, gift or release of the title of the Republic of Mexico to the public domain within the States of the Republic to those States in which they were located, and regulating at the same time the mode in which colonists from abroad could acquire title to them. There is nothing in the entire act from beginning to end, which affects or disposes of the lands of the Republic of Mexico in its territories or provinces, except the 10th and 11th Articles, which, notwithstanding the cession of the public domain to the States, reserved to the Republic of Mexico the right to satisfy claims to land under the act of the 27th of March, 1821, with grants either in the States or Territories. The 16th and last Article of the same law of 18th August, 1824, says: "The government, "in accordance with the principles established in this "law will proceed to the colonization of Territories of "the Republic." Now the Republic of Mexico did not proceed to make any arrangement for the extension of the act of the 18th August, 1824, over the Territories of the Republic until November 21, 1828, and until that date the old law prevailed in the Territories. The section of the act of 18th August, 1824, about which this dispute arises as to its proper construction is as follows;

"Sec. 12. No person shalll be allowed to obtain the "ownership of more than one league square of five "thousand varas (5,000 v.) of irrigable land, (de ragadia,) "four superficial ones of land dependent on the seasons "(de temporal,) and six superficial ones for the purpose "of rearing cattle (de abreradiso.")

"4th Those Territories comprised within twenty leagues "of the boundaries of any foreign nation, or within ten

"leagues of the sea coast cannot be colonized without the "previous approval of the supreme general executive "power."

Now can it be possible that any one, however fertile in reasons, can adduce a just and logical argument to show that the general prohibition as to locality contained in the 4th Article, above cited, does not invalidate the grant when made to native citizens of the Republic, and yet, that the prohibition as to the quantity of square leagues mentioned in the 12th Article of said law, above cited, invalidate and render void a grant made to a native citizen of Mexico in excess of the quantity.

Let us now consider the general rules and regulations for the colonization of the Territories of the Republic issued at Mexico, November 21 1828. It will be seen by a reference to the first article of these regulations, that "The governors of the Territories were authorized (in "compliance with the law of the general Congress of the "18th August, 1824, and *under the conditions hereafter* "*specified*) to grant vacant lands in their respective Ter- "ritories to such colonists (*empresarios*) families or pri- "vate persons, whether Mexicans or foreigners, who may "ask for them for the purpose of cultivating and inhabit- "ing them." Now the regulations of 1828 made some important and marked changes and alterations in the act of 1824. While the act of 1824 says nothing about the approval of Departmental Assemblies, for it acted upon States and not Territories, the regulations of 1828 taking the act of 1824 into the Territories made the Territorial Deputations consent to the Governor's grant, essential to its perfect validity, and if that assent was refused the title papers were required to be forwarded by the Governor to the Supreme Government for its decision. Now if only such grants of Governor of the Province as failed

to receive the approval of the Territorial Deputation were required to be reported to the Supreme Government for decision, is it not plain and conclusive that when the action of the Governor was approved by the Territorial Deputation that a full and perfect title was vested in the grantee, and continued so vested until the Supreme Government of Mexico saw fit to vacate or remodel, or alter the action of both Governor and Territorial Deputation.

The 14th article of the regulations of 1828, alters and changes the 12th article of the act of 1824, by placing a *mimimum* limit to the quantity of land to be granted to one person in the place of the *maximum* limit of eleven square leagues mentioned in the 12th article of the act of 1824. The regulation of 1828, being the latest expression of the Nation's will as to the granting of lands in the Territories, should guide the Court in passing upon the validity of grants made after its passage; and in case of conflict or repugnancy between the act of 1824 and the regulations of 1828, the latter should prevail, as they were made expressly for the granting of lands in the Territories, while the operation of the act of 1824 was expressly confined to the public domain of the States of the Republic of Mexico. In the case of the United States vs. Hartwell, 22 Howard, 286, the Supreme Court say:

"Controlling power over the disposal of the public "domain of the Mexican nation was vested in the De- "partmental Assembly which could confirm or nullify "the Governor's grant."

Under the principle announced by the Court in this case it is evident, that if the Departmental Assembly of California had confirmed and approved this grant of the Governor to Hartwell, the Supreme Court must have held the grant valid or be compelled to assert, that controlling power over the disposal of the public domain of

the Mexican nation was not vested in the Departmental Assembly, and, that it neither could confirm nor nullify the Governor's grant. Upon the principle settled in this case it would seem that the grant of the Governor for over eleven square leagues is not valid if the approval of the Departmental Assembly is not given, but where the approval of the Departmental Assembly is had to the grant of the Governor, then the grantee takes a perfect title to all the lands within the boundaries designated in his title papers, without regard to quantity or number of leagues.

No case has yet been found where the Supreme Court of the United States has ever held void a title to lands under a grant of Spain or Mexico, in other respects unobjectionable, upon the sole ground that the quantity of land granted was in excess of eleven square leagues.

It has already been seen that the colonization law of 1824 and the regulations of 1828 prohibited the granting of lands for colonization within twenty leagues of any foreign State, and within ten leagues of the sea coast, without the consent of the supreme executive power of the Republic of Mexico. This question of the validity or invalidity of grants made by the Mexican authorities within the prohibited locality, without such assent, were valid or void has been repeatedly decided, and the nearly uniform decisions of the Supreme Court of Texas have held such grants invalid. See 3 Texas Reports, 321 and 499; 5 Texas, 410; 9 Texas, 410, 556; 10 Texas, 316; 14 Texas, 146; and 23 Texas, 29. The correctness of the decisions was confirmed by the Supreme Court of the United States in the case of League vs. Egery, 24 Howard, 264; and Foote vs. Egery, 24 Howard, 267. In the Supreme Court of California this same question was presented for consideration, and that Court, in utter

disregard of the rulings of the Supreme Court of the State of Texas, affirmed by the Supreme Court of the United States, and with that fearless manliness indicative of intelligence, truth, and justice held that the act of 1824 and the regulations of 1828 in their prohibitions applied, and were intended to apply only to grants made to colonists from abroad seeking title to lands under the provisions of said acts, and that the prohibition did not operate, nor was it intended to operate on the titles enacted to the native citizens of Mexico. To make an act evidently intending to regulate the rights of foreigners arriving in Mexico as colonists, binding upon the native citizens and restricting their rights, unless expressly declared in the act ought not to be put there by judicial construction to unsettle and vitiate valuable private rights. In the case of the United States vs. Reading, 18 Howard, 1; United States vs. Cervantes, 18 How., 553; and in the case of the United States vs. Bernal, 1 Hoff., L. Cas., 50; United States vs. Grier, Id., 72; United States vs. Thompson, Id., 79 it was held that such grants when made to native citizens were not void or invalid, and the Supreme Court of the United States confirmed them. The action of the Supreme Court of the United States in confirming the rulings in Texas and the adverse rulings in California was what a just and enlightened administration of the principles of law demanded—which is that when an erroneous ruling of the supreme judicial power of a State, under which many valuable rights have become vested—has been repeatedly made and long continued as a rule of property—that less mischief and injustice would result from its confirmation than by its reversal. How is it with these grants in New Mexico? The Governors supposed they had the right to grant over eleven square leagues to one person; and so made them. The Departmental Assembly supposed the action

of the Governor was legal, and in accordance with their understanding of the law confirmed them. The government of Mexico from 1824 to 1848 respected and assented to them as valid grants and made no effort to set aside, reform, or curtail them.

The grantee had been duly placed in possession of the land and for years had continued to occupy and claim it. It was "property possessed" at the date of the treaty of Guadalupe Hidalgo, and by that treaty protected as a full and complete title, and under the Government of the United States. for over twenty years these grants have been owned, claimed, and occupied, and thousands of dollars expended on them by the grantees and their *bona fide* purchasers; and for the Courts now to assume the right to curtail, reform, trample upon, and annul them would result in incalculable loss and ruin. If the Mexican authorities were too stupid to understand their own laws, or too corrupt to care for observing them in the disposition of the public domain, is it not wiser and better and more responsive to justice and right to acquiesce in the mistake and sanction the error, than to annul and violate titles held for a quarter of a centnry under such mistaken ruling? The policy and history of the country and the adjudications of the Supreme Court upon this subject do not favor the trampling upon the perfect private rights of the people on a supposition of an error or mistake in the generosity of another government in the disposition of her own property to her own citizens in accordance with her own laws as understood and administered by her. In the State of Texas it will be seen by reference to Paschal's Digest, page 735, that the following grants were over eleven square leagues were held valid and confirmed, to wit: Jose Mercille Ynojaseu, 111 leagues; Juan Jose Ynojaseu del Balle, 25½ leagues; Rosa Maria Ynojosa, 12 leagues; Jose Nar-

cisco Cabezas, 106½ leagues; Manuel Ganes, 14 leagues; Vincente del Ynojasa, 35 leagues; Jose Salvador La Garga, 59½ leagues; Antonia Revas, 25 leagues. On March 26, 1834, the State of Coahiula and Texas passed a colonization system and the 11th article permitted the acquisition by one person of two hundred and seventy-five millionadas of land, and in the case of Chasular vs. Fish, 22 Texas, 531, the Court held that this departure from the literal restriction of the 12th article of the National Colonization Decree was not the subject-matter of any complaint. See Paschal's Digest, page 225, Art. 4. If the act of 1824 was not binding on the State of Coahiula and Texas, and valid grants could be made by said States for over eleven square leagues, could not the Governor and Departmental Assembly of New Mexico likewise make valid grants for over that number of leagues?

In the case of The United States vs. Peralta et al., 19 Howard, 347, the court says:

"We have frequently decided that 'The public acts of "public officers purporting to be exercised in an official "capacity, and by public authority, shall not be presumed "to be usurped, but that a legitimate authority had been "previously given or subsequently ratified.'" To accept a contrary rule would lead to infinite confusion and uncertainty of titles. The presumption arising from the grant itself makes it "prima facie" evidence of the power of the officer making it, and throws the burden of proof on the party denying it. The general powers of the governors and other officers to grant lands within the colonies in full property, and without restriction as to quantity and in reward for important military services, were fully considered by the court in the case of The United States vs. Clark, 8 Peters, 436.

In the case of The United States vs. Sutherland et al., 19 Howard, 363, the argument and decision of the court is so just, clear, and forcible upon the question of the size of these grants as to make it proper to quote it extensively. The court says:

"In construing grants of lands in California made "under the Spanish or Mexican authorities we must take "into view the state of the country and the policy of the "government. The population of California, before its "transfer to the United States, was very sparse, consisting "of a few military posts and some inconsiderable villages. "The millions of acres of land around them, with the ex- "ception of a mission or a rancho in some favored spot, "were uninhabited and uncultivated. It was the intent "and the policy of the King of Spain, and afterwards of "the Mexican government, to make liberal grants of "their lands to those who would engage to colonize or "settle upon them. Where land is plenty and labor "scarce, pasturage and the raising of cattle promised the "greatest reward with the least labor. Hence persons "who established ranchos required and readily received "grants of large tracts of country as a range for pasturage "for their numerous herds. Under such circumstances, "land was not estimated by acres or arpens. A square "league (or "sitio de ganado mayor") appears to have "been the only unit in estimating the superficies of land. "Eleven of these leagues was the usual extent for a "rancho grant. If more or less was intended in the "grant, it was carefully stated. Surveying instruments "or surveyors were seldom to be obtained in distant "locations. The applicant for land usually accompanied "his petition with a diseno or map, showing the natural "boundaries or monuments of the tracts desired. These "were usually rivers, creeks, rivulets, hills, and moun- "tain ranges. The distances between these monuments

"were often estimated at about so many leagues, and "fractions of this unit little regarded. To those who "deal out land by the acre such monuments as hills, "mountains, &c., though fixed, would appear rather as "vague and uncertain boundary lines. But when land "had no value and the unit of measurement was a league, "such monuments were considered to be sufficiently cer-"tain. Since this country has become a part of the "United States, these extensive rancho grants, which "then had little value, have now become very large and "very valuable estates. They have been denounced as "'enormous monopolies, princedoms,' &c., and this court "have been urged to deny to the grantees what it is "assumed the former governments had too liberally and "lavishly granted. This rhetoric might have a just in-"fluence when urged to those who have a right to give "or refuse. But the United States have bound them-"selves by a treaty to acknowledge and protect all 'bona "fide' titles granted by the previous government, and "this court have no discretion to enlarge or curtail such "grants to suit our own sense of propriety or defeat just "claims, however extensive, by stringent technical rules "of construction to which they were not originally sub-"jected."

It will be seen by this eloquent and just exposition of the law that the Supreme Court does not feel authorized to vacate these perfect titles under another government, however extensive or valuable they may be, protected as these rights are by the solemn stipulations of a national treaty.

It will be seen that due notice of the existence of this grant was in the possession of the United States long before the date of the treaty of Gundalupe Hidalgo. The court will remember, as a historical fact, that General Kar-

ney took possession of the Territory of New Mexico the 18th of August, 1846, together with all the title papers then in the archives of New Mexico; and the original title in this case, in conformity with a law of Gen. Karney's enacting, was recorded in a book provided for that purpose, February 15, 1849. See printed record, page 99. It will thus be seen that during all this time, from 18th August, 1846, to 15th February, 1849, this original title was in the possession of the United States and then placed on record in conformity with law as a *bona fide* title.

Let us now direct the consideration of the court to the last proviso to the 5th section of the act of 21st of June, 1860, under which this suit was instituted in the Supreme Court of the Territory of New Mexico, and is now before the Supreme Court of the United States on appeal. This proviso does not direct the court to adjudicate this case in accordance with the strict technicalities of the Colonization law of 1824, and regulations of 1828. This proviso has a more extended, just, and liberal purpose, and says to the court, in substance, examine this title under the treaty of Guadalupe Hidalgo, and see if it is not such legal or equitable title as is proper to be confirmed by the stipulations of that treaty. Then consider under the law of nations and decisions of the of the Supreme Court, and determine if if it was not entitled to recognition and confirmation as a perfect title under the law of nations if no treaty had been made to protect it; and consider if this title, by the usage and custom of the Republic making the grant, is not valid as in accordance with that usage and custom. And in the further investigation of this case, go into a consideration of the great principles of equity justly applicable to the facts set forth in the record, and if any prior decisions of the Supreme Court exist based upon a state of facts similar to those disclosed in

this record, apply such decisions to the consideration of this title. It was not expected by Congress in conferring jurisdiction on the Supreme Court of the Territory of New Mexico, and on the Supreme Court of the United States, that either court would subject this title to conditions and restrictions of a foreign law as we understand it, and not as it was understood and administered by the government enacting it, and if an *i* was not dotted or a *t* not crossed as required by the act of 1824, and the regulations of 1828, to say to these people, "Get away from here, you Mexicans, these lands are ours."

Congress in its action on these grants has repeatedly confirmed similar grants in New Mexico for quantities of land much larger and vastly more valuable than this, and the courts of the country ought not to hesitate cheerfully to extend to these titles and the rights vested under them that protection received by similar grantees. In the case of Hursly et al. vs. The United States, 10 Wallace, 224, the court seems to have examined fully into the grants of the public domain of Mexico and divides them into three kinds: 1st. Grants by specific boundaries where the donee was entitled to the entire tract described: 2nd. Grants by quantity as of one or more leagues situated at some designated place or within a larger tract described by out boundaries, where the donee was entitled out of the general tract only to the quantity specified: 3rd. Wants of places by name where the donee was entitled to the tract named according to the limits as shown by its settlement and possession or other competent evidence. In this decision the rulings in many other cases are considered, and the effect of nonconformity with the law of 1824 and the regulation of 1824, discussed and commented upon. In that case it will be seen that no approval of the grant had been made by the Departmental Assembly, and no segre-

gation of the quantity of land donated by actual survey, nor had any judicial possession of the land been given according to law or in any manner taken by the grantee. The grant on its face was made subject to the approval of the Departmental Assembly and certain conditions annexed, which were: 1st. The grantee was to enclose it without injury to the passes, roads, and servitudes and was to enjoy it fully and exclusively, appropriating it to such use as might suit him. 2nd. They shall solicit the proper judge to give them juridicial possession by virtue of this decree, and he shall make the boundaries with the proper landmarks. 3rd. The land hereby granted is nine leagues of the largest size, and is situated on the surplus or vacant lands of the ranchos of Don Carlos Weber and Don Jose de Jesus Bernal, including the lands of the Cerro Colorado towards the valley. The judge, who shall give the possession, shall have it measured in conformity to law in view of the map which will be presented by the parties interested.

Now let it be remembered that no Departmental approval existed. No enclosure was made. No solicitation for juridicial possession was made, nor was any possession taken, nor were the boundaries marked with proper landmarks. No map was presented or measurements made. The court in the consideration of this title and the effect of the non-compliance with the conditions inserted in it, says:

"The instrument purports on its face to transfer a full "title to the property solicited. If valid when issued, it "passed, according to the decision in the Fremont case, "to the grantees a present and immediate interest in the "quantity of land specified, to be subsequently laid off "by official authority, and this brings us to the question "whether there was anything in the action of the Gov- "ernor or of the grantees, previous to the issue, which

"impaired its validity; and if the instrument was valid "when issued, whether there was any such subsequent "disregard of its conditions as to work its forfeiture?

"That the Governor, under Mexico, was authorized to "make grants of land in the Department of California is "not questioned, and that the instrument produced in "this case is genuine and was issued by him is admitted. "But it is said that the grantees did not accompany their "petition with a map of the land solicited, and that the "Governor did not make any inquiries as to the qualifi- "cations of the petitioners and the condition of the land "as required by the regulations of 1828, which were "adopted to carry into effect the Colonization law of "1824." * * * It is there stated, as was decided in the Fremont case, that "The court could not, without "doing injustice to individuals, give to the Mexican laws "a more narrow and strict construction than they re- "ceived from the Mexican authorities who were intrusted "with their execution."

The court then proceeds to hold that, "There is nothing "in these objections which touches the validity of the "instrument at the time it issued. And the clause sub- "jecting the grant to the approval of the Departmental "Assembly did not prevent the title from passing to the "grantees upon the execution of the instrument. Such "approval was not a condition precedent to the vesting "of the title. According to the regulations of 1828, the "authority to make grants of land in California was "lodged solely with the Governor. It was not shared by "him with the Assembly. That body only possessed the "power to approve or disapprove grants made by him; "until such approval the estate granted was subject to "be defeated. With such approval the grant became, as "it was termed in the regulations, 'definitely valid,' that

"is, it ceased to be defeasible and the estate was no "longer liable to be divested, except by proceedings for "breach of its other conditions.

"Besides, it was the duty of the Governor, and not of "the grantee, to submit to the Assembly grants issued "by him for their approbation. His neglect in this "respect suspended the definitive validity, as it was "termed, of the grants; that is, it prolonged the liability "of the estate to be defeated by the action of the Assem- "bly and the supreme government thereon, to which the "matter was referred in case the approval of the Assem- "bly was not obtained, and no other consequence fol- "lowed. His neglect was not permitted to operate to "divest the grantees of the estate already vested in them. "In many instances years elapsed before the approval "was obtained, although the grantees were in the mean- "time in the possession and enjoyment of the property, "and, in many instances, no approval was had previous "to the conquest."

In support of the principles announced in this case are the following decisions of the Supreme Court cited: United States vs. Reading, 18 How., 4; United States vs. Baca, 18 How., 556; United States vs. Larkin, 18 How., 558; United States vs. Cervantes, 18 How., 553; United States vs. Johnson, 1 Wallace, 329; United States vs. Fremont, 17 How., 561.

The court then proceeds to discuss the effect upon this title of the non-compliance upon the part of the grantees with the conditions annexed to the grant, and the court held that:

"The grant being valid at the time of its issue, has "there been any such disregard of its conditions annexed "as to work its forfeiture? The objection taken is, that

"the grantees never applied to the proper magistrates for "official delivery of the possession, as provided in the "second condition, and that they never entered upon the "land. The objection applies only to the period inter- "vening between the date of the grant and the time when "the country passed under the jurisdiction of the United "States. The question is, what right did the grantees "acquire in the land from the Mexican authorities? The "court cannot inquire into any acts or omissions by them "since those authorities were displaced."

The court then fixes the 7th of July, 1846, as the date at which the United States assumed possession of California, and the authority of Mexico faded away. The court then says:

"Between the date of the grant under consideration "and the period thus designated, only sixty-one days "elapsed. There are very few instances of grants in "California where a juridical possession was delivered to "the grantees within a period as limited as this after their "issue. In many instances years elapsed before this pro- "ceeding was had; and in many instances no juridical "possession was ever delivered previous to the con- "quest. * * *

"But independent of the considerations stated, it is a "sufficient answer to the objection to say, that mere neg- "lect to comply with the condition did not of itself work "a forfeiture of the grantees' right under the Mexican "law. The neglect of a grantee to apply for or take pos- "session, if unreasonably prolonged, only left the land "open to denouncement by other parties desiring to "appropriate and use it. The interest of a grantee could "not be divested under the Mexican law any more than "at the common law upon mere allegations and surmises. "Some formal and regular proceedings were required to

"effect such divestiture, and under the Mexican law these "had their inception, in what is termed a denouncement, "by a party desirous of obtaining the land. An investi- "gation then followed, whether or not the condition had "been complied with, or so disregarded as to justify a "decree of forfeiture. Without such inquisition and "decree the title did not revert to the Government, nor "was the land subject to be regranted.

"The object of the colonization laws and regulations "of Mexico was the settlement of the vacant lands of "the Republic, and grants were usually made to accom- "plish this purpose without other considerations. But "the public, as observed in the Fremont case, 'had no "interest in forfeiting them, even in these cases, unless "some other person applied for and was ready to occupy "them, and thus carry out the policy of extending its "settlements.'"

The court in this case reversed the decision of the court below, and confirmed to the petitioner the land granted him. Let us now compare the present case with the case of Hewesly in order to demonstrate its more complete and perfect validity. The Vigil title wrs regularly made by the Governor on petition for the land, and after full consideration was approved by the Departmental Assembly; juridical possession of the land granted was ordered, and, by the officer designated by law, was given on the 15th of March, 1846. It will be seen that on the 18th day of August, 1846, five months after the date of juridical possession of this grant, the United States assumed possession of the government of New Mexico, and Mexican jurisdiction ended. Now the court will readily see that if the conditions were not complied with, if they had been inserted in the grant as proposed in the petition, that no blame or forfeiture could have been insisted upon for five months' non-compliance, when in the

petition five years was the time, and in the grant, none. Two wells were dug in the arid, and destitute Jornada of ninety miles without a drop of water, rightly called the "Jornado del Muerto," (journey of the dead) over which I have passed eigety times within the last twenty years, and I know the road is plainly marked with the whitened bones of men and animals from one end of this journey of death to the other. Two factories had to be erected for the reception and working of delinquents sentenced by the courts to suffer for crime. The petitioners were to have the machinery completed in five years with two field-pieces and a sufficient number of arms to repel the hostile Indians then in revolt. The court will readily see that nothing but a special interposition of Divine Providence could have enabled the petitioners to accomplish all these things in five months, and the idea that their title should be forfeited and annuled for not doing so in a few months, when their proposition allowed them five years in which to perform them, is absurd and wanting in any equity. It is a mistake to suppose that these propositions in the petition of the applicants were made conditions in the grant in any manner affecting the title. The committee of the Departmental Assembly, in considering these propositions, pronounced them "extravagant, injurious, and dangerous," for the reason that the lands were situate in the center and common retreats of the numerous tribes of savages, preying upon New Mexico then at war and never at peace; and the committeee of the Departmental Assembly recommended the grant to be made without them, and it will appear from the report of the committee, on the 10th day of January 1846, that it was considered by the Departmental Assembly and approved without addition or amendment. It will be thus seen that the grant was made without imposing on it any conditions except

that the pasturage should be free. The declaration of the committee, adopted by the Departmental Assembly, that the grant was asked for the purpose of opening wells and planting the lands, as far as their means will permit, constituted no condition in the grant. See printed record pages 92 and 93. The large amount of supplies for the army and people in Southern New Mexico and Eastern Arizona, having to pass over this ninety miles without water to the great loss of their cattle and mules, has made it an object of vast importance to obtain water on the center of this desert and arid plain. Years ago Congress appropriated a large sum of money in order to obtain artesian water in these arid localities. For this purpose an expedition was organized and placed under the direction ofan energetic, highly cultivated, and scientific lieutenant of the army. The Jornada del Muerto was examined by this expedition, and it was scientifically, geologically, hydrosstatically, and stratalogically determined that artesian water could not be had on the Jornada del Muerto, and it was no use to bore for it. A few years since, inmaking one of my semi-annual trips across this Jornada del Muerto, and not being a government officer, whose life or protection was of sufficient importance to require a military escort, I set out alone, and about eleven o'clock at night I drew up to the hospitable hotel of Jack Martin, situate on this waterless desert about midway. This pioneer's practicable common sense and persevering energy told him him there was water under this arid plain, and that by digging away industriously he could strike it. He kept digging, and at eighty feet he struck a stream of water that drove the workman from the well, and stood in it twenty-five feet next morning. And on my recent passage across the Jornada, there was fifty feet of water in the well, and a rich, cool, and sparkling supply of that luxury which "the more we press it to our lips

the sweeter it becomes." A thimbleful of practical common sense sometimes puts to shame bushels of magnificent theory. Jack Martin has now a good house, safe *corral*, plenty of water for all travellers, something like fifty feet standing in his well, and all efforts at the pump are unavailing to exhaust or diminish the quantity of water.

Under this grant, since 1846, more than one hundred persons have settled under sale and lease and permission to occupy these lands, and now to vacate their titles to lands purchased in good faith and paid for by them, and turn them out of their farms and homes on which they have expended thousands in good faith, believing that the grant was good and their title valid, would cause wide-spread ruin; and to now deprive them of their property would not seem to be extending to the original grantees and their vendees in this case that protection to the property they possessed at the date of the treaty, without charge, contribution, or tax of any kind whatever, which was meant by the treaty of Guadalupe Hidalgo.

In the Supreme Court of the State of California, in the case of Hager vs. Lucas, 29 California, 309, it was held "that a patent issued by the United States for land "granted in California by Mexico or Spain is not void "because the grantee of Mexico or Spain had received "grants for more than eleven square leagues before the "grant on which the patent issued."

In the case of Kembell vs. Semple, 25th California Reports, page 440, it was held that "a patent of a con-"firmed Mexican grant of lands, issued by the United "States, cannot be called in question in an action brought "by those claiming under it to recover possession of the "land by evidence showing that the Mexican govern-"ment had granted to the Mexican grantee more than "eleven leagues of land previous to the grant on which "the patent was issued."

In the case of Semple vs. Hagar, 27 California, 163, it was held that "a patent issued by the United States for "a confirmed Mexican or Spanish grant will not be "vacated by a State court because the grantee had re- "ceived a donation of more than eleven square leagues "of land from Mexico or Spain before he received the "grant confirmed."

If a patent could not be vacated because the grantee had obtained a confirmation of a title to over eleven square leagues of land from Spain or Mexico, it would seem to be clear that a *bona fide* title given by Spain or Mexico in excess of eleven square leagues ought to be confirmed and not vacated by the court, if a choate, perfect, and complete grant at the date of the treaty of Guadalupe Hidalgo, undenounced for that defect, and not re-granted to any one else by Mexico prior to the treaty; and if Mexico had respected and held valid the grant, and protected it, and if her citizens held a title considered valid, that our government ought not to undertake to vacate and annul the title on account of any objection as to size or extent, not interposed or set up by the prior government.

In what position does the grant to Vigil et al. stand before the court as now presented? As the act of the Republic of Mexico of 1824, and the regulations of 1828, authorized the Governor of the province of New Mexico and its Departmental Assembly to grant the public domain of the province to foreigners and citizens, such grants, so made, are legislative grants of the proper officials of the Republic of Mexico. In the case of Polk vs. Wendell, 5 Wheaton, 293, it was held that "a grant "raises a presumption that every prerequisite to its being "issued was complied with." The Supreme Court of the repeatedly held that they will not entertain objections, exceptions, or defense which was not interposed in court below. See Doe vs. Watson, 8 How., 263; Bates vs.

vs. Reach, 9 How., 366; Newell vs. Nixon, 4 Wal., 572; Railroad Co. vs. Lindsey, Ib., 650.

When the conditions of the Colonization Law of 1824, and Regulations of 1828 were alleged to be violated by granting lands within ten leagues of the coast and twenty leagues of the frontier, the Supreme Court of the State of Texas held such grants void and refused their confirmation. In the case of Chisty vs. Pridgeon, 4 Wall., 196, the decisions upon this point were carefully and fully considered by the Supreme Court, and Justice Field, in sustaining the decision of the Supreme Court of the State of Texas, followed the decision of the Supreme Court in the case of League vs. Egery, 24 Howard, 266, and the case of Shelby vs. Grey, 11 Wheaton, 367. In this case the point was decided upon the ground that the rulings in Texas had "become a rule of property in that State, "any departure from which would disturb titles to ex-"tensive and densely settled districts of country."

It is evident from a careful examination of the opinion of the Court in the case of Christy vs. Pridgeon, 4 Wall. 196, that while the Supreme Court did not in that case feel called upon to decide which ruling were the better and more correct, that of the Supreme Court of the State of Texas or that of the Supreme Court of the State of California, yet it is evident that if the question were disconnected with the disturbance of the rights of property created under the decisions in the Supreme Court of the State of Texas, and had the point been presented to the Court as an original question of the proper construction of said Article of the Colonization act of 1824, that the Supreme Court would have held and decided that grants made to natives of Mexico, within the twenty leagues of madfrontier and ten leagues of the coasts, were neither act onor voidable. Now is a suitable occasion to fix the structability of these rulings to the case now under consideration. It has been the well settled ruling and prac-

tice, usage, and custom of the Republic of Mexico, not to enforce or apply the eleven-square-league article of the act of 1824 to grants made to natives, and for more than thirty years in New Mexico, such has been the ruling in their District and Supreme Courts, and to now disturb and reverse it would unsettle and vacate the title to millions of dollars worth of property, purchased in good faith, and occupied by thousands of the people of New Mexico. Under this State of facts the Supreme Court of the Territory could not do otherwise than decide in favor this grant to Juan B. Vigil, et al., and it is believed that the Supreme Court will see no just or valid ground upon which to reverse or vacte it. In this case of Vigil, when the Court sees that since 1828 the Governor of New Mexico, and the Departmental Assembly have continuously and repeatedly, up to 1846, granted lands to their citizens, under a firm belief of their right and power and authority by law to do so, and their action in making such grants has been assented to and acquiesced in for a long series of years by the Republic of Mexico; of which grants millions have been expended on their purchase and improvements, on which thousands of people have in good faith made their houses; the Court will hold in the language of the Court in the case of Christy vs. Pridgeon, that the decision of the Supreme Court of the Territory of New Mexico in the Vigil case will not b vacated, and that the Supreme Court of the United Stat will not undertake to vacate and annul titles, even if give (which is not granted) under mistaken notions of the l gal authority of the officers of another government, whe the effects of that decision will be to "disturb titles extensive and densely settled districts of country."

In the case of the United States vs. Auquisela, 1 W lace, 352, Justice Field, in delivering the opinion Supreme Court, cites with commendation the ob tions of Justice Grier, in the case of the United St

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Johnson, 1 Wallace, 326, and says: "To these observations we will only add that the United States have "never sought by their legislation to evade the obligation devolved upon them by the treaty of Guadalupe "Hidalgo to protect the rights of the property of the inhabitants of the ceded Territory, or discharge it in a "narrow and illiberal manner. They have directed their "tribunals in passing upon the rights of the inhabitants "to be governed by the stipulations of the treaty, the law "of nations, the laws, usages, and customs of the former "government, the principles of equity, and the decisions "of the Supreme Court, so far as they are applicable. "They have not desired the tribunals to conduct their "investigations, as if the rights of the inhabitants to the "property which they claimed, depended upon the nicest "observence of every legal formality. They have desired to act as a great nation not seeking, in extending "their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just "rights which could have been claimed from the government they superseded."

In the celebrated case of the United States vs. Vallejo, 1 Black, page 541, Justice Nelson delivered the able opinion of the Supreme Court against the validity of the grant to Vallejo. The point upon which this case turned was, that no power had been conferred upon the Governor of the Province of California to sell the public domain for a money consideration under the Colonization law of 1824, and if such power existed prior to the act of 1824, that the act of 1824 so changed and altered the previous law as to, in effect, repeal it. In this decision it is held by the Court that the regulations of 1828 extending the act of 1824 over the Territories required that the grants made should conform to the conditions contained in the act of 1824. It is suggested to the Court that this conclusion may not be sustained by the Court on a recon-

sideration of the act of 1824, and the regulations of 1828. The first section of the regulations of 1828, investing the Governor with power to make grants in compliance with the law of August, 1824, expressly provides that such grants were to be made under the conditions hereinafter mentioned, which cannot mean anything but the conditions set forth in the regulations of 1828, and not the conditions specified in the act of 1824. If it had been the purpose and intention of the Republic of Mexico to subject the grants of lands in the territories to all the conditions and requirements of the act of 1824, it would have only extended to the Territories the act of 1824, and omitted the regulations of 1828 under which the act of 1824 was to be executed. It must be clear and manifest that it was the purpose and intention of the Republic of Mexico to materially alter the act of 1824, so far as it operated upon lands granted in the Territories after the act of 1824 was put in force in the Territories under the regulations of 1828. Hence, if any conflict exists between the act of 1824, and the regulations of 1828, the act of 1824 must give way, as the regulations of 1828 were the expression of the last intent, purpose, and determination of the Republic of Mexico upon the disposal of public lands in the distant Provinces of the Republic; and these regulations were made in order to change, alter, and modify the act of 1824 in its territorial extension and operation.

The Court will see that in the act of 1824, article 12, that a *maximum* quantity of eleven square leagues is fixed by that act of colonization as the limit to the quantity to be granted to one person, but in the regulations of 1828 the 14th article changes the quantity to be granted to a *minimum* quantity and imposes no *maximum* limit to th power of the Governor and Departmental Assembly will be seen that under the regulations of 1828, a 9th, the Governor of the Territory was required

port quarterly and circumstantially to the supreme government the grants made, and it is to be presumed that the Governor of New Mexico complied with this regulation and made his quarterly report; and it is equally to be presumed that the Government of Mexico, ratified, assented to, and confirmed the grants of the Governor and Departmental Assembly of the Province, and if another government, more than twenty years afterwards, by the accidents of war, becomes possessed of sovereignty over these lands, and seeks affirmatively to annul and vacate them, positive and direct proof must be produced by such government that the government making the grant did not assent to, ratify, or confirm the acts of the Governor and Departmental Assembly in granting more land to their citizens than the colonization law of 1824 and the regulations of 1828 authorized to be granted to one person. It is a principle of law, too long and satisfactorily established to be questioned, that when the agent exceeds the authority conferred on him by the principal, the principal, if he makes no dissent to the action of his agent, and after due notice does not object to or avoid the action of his agent, that then the principal is bound by such unauthorized action of his faithless agent. If the sitting aside the action of the agent would seriously and greatly prejudice the rights of those confiding in the authority of the agent, then no such annulment of the acts of the agent by the principal will be tolerated. When the proposition is, which of two innocent parties shall lose by the misconduct of another, the party whose agent the blunderer was, must bear the loss. In this case the Republic of Mexico did not suppose that either its policy or its laws had been violated by the grant to Vigil et al., and at this late day for another government to seek the forfeiture, confiscation, or clouding and unsettling of these titles, and the extensive and valuable rights which have grown up and become vested under

them, would be a blot upon the justice and faith of a great nation, which should be careful of teaching its people a lesson of dishonesty by its own practice.

It would thus seem that the grants of lands in the territories should conform to the regulations of 1828, and cannot properly be stretched or amputated to accommodate the act of 1824, which provided for and was limited to the disposal of the public domain of Mexico to her States, and never enforced in her territories.

In the case of The United States vs. Segui, 10 Peters, 306, and The United States vs. Rodman, 15 Peters, 130, it was decided by the Supreme Couurt that "Where no "condition is attached to a grant, but it is absolute in its "terms, the court cannot raise one by implication." In this case the conditions set forth in the petition of Vigil et al. were considered by the committee of the Departmental Assembly, to whom referred, as impossible to be performed in the then condition of that locality, surrounded and overrun by numerous tribes of hostile Indians, and the Departmental Assembly, in the proper exercise of its power and discretion, assented to the grant, and inserted no conditions whatever to impair, vacate, or destroy its validity. Judicial possession of all the lands within the known, visible, and well defined boundaries, mentioned in the grant, was given to the grantees, and they held and enjoyed it as their property with an unconditional, choate, and perfect title as the private property of the grantees; and for another government, a quarter of a century after this property has been held, claimed, and possessed as private property—for the United States, without ever having had originally a particle of title to the land, or ever having acquired title under the treaty of Guadalupe Hidalgo, to attempt to appropriate the largest portion of this private property of these grantees to public use without compensation is not to be expected in this enlightened age

The Supreme Court of the United States in the case of Arredondo et al. vs. The United States, says that they will "decide whether the lands in controversy were the "property of the claimants before the treaty, and if so, "its security is as much protected by the laws of a re- "public as by the ordinances of a monarchy." The court further proceeds to say, at page 717, that "the principle "by which a title is to be tested is whether, by the laws of the province, it was property at the time the treaty took effect."

Chief Justice Marshal, in delivering the unanimous opinion of the court in the case of the United States vs. Juan Perchman, 7 Peters, 51, says:

"It may not be unworthy of remark, that it is very "unusual, even in cases of conquest for the conqueror to "do more than to displace the sovereign and assume "dominion over the country. The modern usage of "nations, which has become law, would be violated; that "sense of justice and right, which is acknowledged and "felt by the civilized world, would be outraged if private "property should be generally confiscated and private "rights annuled. The people change their allegiance; "their relations to their ancient sovereign are dissolved, "but their relations to each other and their rights of "property remain undisturbed." If this is the correct rule as to private property in the case of conquest, its application to the acquisition of jurisdiction by treaty over foreign soil cannot be doubted, and it is firmly hoped that whenever and wherever this great nation plants its jurisdiction and sovereignty over foreign soil, it does so to elevate, protect, bless, and benefit it, and not like a nation of Goths and Vandals, leave in the wake of their glorious progress the confiscation and destruction of millions of dollars worth of private property donated to the descendants of the fearless and heroic people of Spain and Mexico, who first planted and maintained the banner

of civilization and Christianity in the remote center of this great continent.

And now I hold up before this just and intelligent tribunal of last resort, the laws of nations, the usages and customs of Spain and Mexico, and the decisions of this Supreme Court of a great Republic. I hold up before you the sacred and solemn treaty of two sister Republics, thrown around the private rights of this people, promised protection to their lives, liberties, property, and religion, with all those solemn safeguards, held sacred among nations and honorable among men, and I feel that I will not hold them up in vain, so long as human laws and the principles of equity and justice afford any protection to human rights.

JOHN S. WATTS,
Attorney for Appellees.

Supreme Court of United States.

DECEMBER TERM, 1871,

Appeal from the Supreme Court of the Territory of New Mexico.

THE UNITED STATES *appellants*,
vs.
THE HEIRS OF JUAN B. VIGIL, *deceased, and others appellees.*
No. 40.

BRIEF OF THOMAS EWING,

FOR APPELLEES.

This is an appeal from a decree of the Supreme Court of New Mexico, confirming a land claim brought into that court for adjudication under the 5th section of the act of Congress of June 21st, 1860. (12th Statutes at Large, page 72.)

The claim, and the decree of the court below confirming it, are founded on the following title papers:

1st. A petition of Rivera, Vigil and Houck, dated December 28th, 1845, for a grant of the land known as "the Jornado del Muerto, with the following boundaries: on the northwest by the little table land of the Contadero, on the west by the river Del Norte, on the south by the old site of Doña Ana, and on the east by the range of the Sandia mountains, and its tributaries in that direction."

(Record, page 95,) and offering as a consideration for the grant to construct two wells with tanks for the relief of travellers over the Jornado; to establish two factories, to be used as departmental penitentiaries; and to arm the settlement against hostile Indians, with two field pieces and a sufficient number of small arms, *within five years.* (Record, page 94.)

2d. Grant and reference to the Departmental Assembly by the Governor, Armijo, and Miguel E. Pino, first official, January 10th, 1846. (Record, page 95.)

3d. Decree of Assembly, dated January 10th, 1846, signed by Chaves, as president, and Quintana y Rosas, as secretary, granting the lands asked for to Vigil and Rivera "for the purpose of opening wells and planting, as far as they are able." (Record, page 97.)

4th. Order of the Governor, by Nicholas Quintana, acting secretary, dated February 4th, 1846, to the "justice and judge of original jurisdiction of this capital, Santa Fe," directing him to place the grantees in possession, "with the boundaries designated in the petition, as the most excellent Departmental Assembly did not alter them and restricted only the exclusive right of pasture, which shall be free to travellers who go and come over the road, but not to owners of stock and shepherds of this and other departments:" directing that, on Houck presenting his naturalization papers, he be considered one of the grantees, and that a certified copy of this letter be attached by the judge to the deed of concession for the protection of the parties interested. (Record, page 98.)

5th. Certificate of Chacon, dated February 5th, 1846, stating that he had received the grant and decree, and the order of the Governor of the 4th of February, and that he would proceed to put the parties in possession accordingly. (Record, page 98.)

6th. Order of Chacon, dated February 7th, 1846, attaching a certified copy of the Governor's letter of February 4th "to these decrees," as directed by said letter. (Record, page 99.)

7th. Certificate of Chacon, dated 15th March, 1846, that Rivera and Vigil were placed in possession. (Record, page 99.)

8th. A suspensory order, to which is attached no signature, but a rubric, (executed by Chacon, Record, pp. 45, 51 57,) saying that the Governor ordered that the owners of the grant should not proceed to construct wells until a dispute as to the northern part of the grant should be settled, and that the term of five years, "limited for the construction of wells," should not begin until such settlement. (Record, page 100.)

9th. Certificate of Chacon, dated 16th of September, 1846, that Houck had presented naturalization papers, and was, therefore, admitted as a participant in the grant, as required by the Governor's order. (Record, page 100.)

10th. Certificate dated 18th of August, 1832, signed Santiago Abrew, Political Chief of the Territory, and Theodosio Quintana, secretary, declaring Houck's naturalization. (Record. page 87.)

In discussing the several errors assigned here, it is convenient to commence with the second, which is as follows: (Brief for appellants, page 17.)

SECOND ERROR.

"The existence of a grant was not legally proved by the indispensable Mexican record and archive evidence.

"On the contrary, the only written evidence of its existence which was offered by the claimants, admitted by the court, and objected to by the appellants, was produced from the private possession of the claimants themselves."

A brief statement of fact drawn from the record will show that this allegation cannot be sustained.

It was the rule in making grants in New Mexico for the officer who gave possession to give the grantees a copy of the papers evidencing the grant, attached to his certificate of possession, and to retain the originals and return them with a duplicate of the certificate of possession to the Secretary of the Governor, (Record, page 52, 53, and 56.) Often, however, the original was given the claimant and the copy retained. (Ibid.)

An examination of this record discloses the fact that it contains *both* sets of title papers, that given the claimants and that retained by the Government. This is shown by these facts:

1st. The order of the Governor to Chacon requires him to attach a certified copy of it to the *claimant's* title papers. Accordingly we find a copy of that order in Spanish, (in Chacon's handwriting, Record, pp. 45, 57, and 12, 13, 14,) and Chacon's original certificate to its correctness as a copy, and his original order attaching it to claimant's title papers, on papers 12 and 13 of the printed record. The *original* also of that order of the Governor was on file in the Surveyor General's Office, (Record, page 25,) and was before the court below with all the papers of that office touching this grant. (Deposition of Surveyor General Clark, Record, page 43.) That it was the original is proved by Chacon, (Record, page 56,) and Donaciano Vigil, (Record, page 52,) and is evident from the fact that it lacks both the certificate and the order of Chacon, which are attached to his copy. (Record, p. 25.)

2nd. There are in the record duplicate originals of the certificate of possession as is shown by the fact that the original filed by claimants, with their petition to the Surveyor General, May 23, 1869, marked A. No. 2, folios 1 to 9, (Record, page 13,) is witnessed by *Salazar* and Tafoya, while the other (page 99) is witnessed by *Ramirez* and Tafoya.

These facts indicate beyond doubt that both sets of title papers are in the record, a fact that is stated and commented on in appellant's brief.

Now, what portion of these papers came from the hands of the claimants?

None except the set on pages 10 to 19 inclusive, printed record, which includes the certificate of possession witnessed by *Salazar*, the *copy* of the Governor's order to Chacon, and Chacon's certificate to the copy and order attaching it to the title papers. These original papers were filed by claimants, with their petition to the Surveyor General, (Record, page 9,) and are referred to in it as "folios 1 to 8," by which word and numbers they are designated on the margin of the printed record, (pages 10 to 14.) Except this set, not a paper was filed that came from the possession of claimants: and if all these were excluded, claimant's case would still be fully proved.

Whence came the other papers which were in evidence below? Every one of them, from the Surveyor General of New Mexico, who produced them in the court below in response to a subpœna duces tecum. (Record, p. 43.) He was the legal custodian of all archives relating to grants in New Mexico belonging to the former Government. The 8th section of the act of July 22, 1854, (10th Statutes at Large, page 308,) provides for the appointment of a Surveyor General for New Mexico, and makes it his duty, "under such instructions as may be given by

the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico, and for this purpose he may issue notices, summon witnesses, administer oaths, and *do and perform all other necessary acts.*" By the instructions of the Secretary of the Interior which are, by this act, given the force of law, he is advised that "among the necessary acts contemplated by the law required of you is that: 2d. Upon your arrival at Santa Fe you will make application to the Governor of the Territory for such of the archives as relate to grants of land by the former authorities of the country. You will see that they are kept in a place of security, and that access is allowed only to land owners who may find it necessary to refer to their title records, and such references must be made under your eye, or that of a sworn officer of the Government."

(Report Com'r General Land Office, 1871, p. 66.)

These instructions show that at their date (1854) the Governor's Office in New Mexico, was known to be the depository of archives relating to grants by Mexico; and the record here shows that as early as 1847–'8 the retained set of these title papers were filed in that office. Donaciano Vigil, who was appointed Secretary of the Territory by General Kearny, September 22, 1846, and was Secretary or Acting Governor by military appointment thenceforth until 1851, (Record page 49,) testifies that he made a record of land titles by order of General Kearney. That book was produced in court, and witness exhibited in it "the record of the title of possession in the Jornado Del Muerto, donated to one Juan Bautista Vigil y Alarid, Solomon Houck, and Antonio Jose Rivera, and the possessory act made by Jose Alvino Chacon, judge of the first instance, recorded by me as secretary at that time," to wit, 1847–'8. (Record, page 55.)

The papers so recorded were the set retained by the Alcalde for the archives. It was his duty to transmit them to the Secretary of the Governor, (Record page 56.) The presumption of law in favor of the regularity of the acts of public officers, and the presumption of fact from the papers being recorded in the office of the Secretary, in 1847–'8, combine to establish the proposition that these papers, from the date of their execution in 1846, were archives of the Mexican Government, and beyond reach of unauthorized amendment.

THIRD ERROR.

The third error alleged in appellant's brief is, that that there is both intrinsic and extrinsic evidence of fraud in the title papers.

To this we answer—

1st. The Court cannot on this hearing justly decree against this title on the ground of fraud, because there was no allegation or intimation of fraud in the trial below. Chacon, the alcalde, is charged in appellant's brief with having fabricated the paper which they most strongly allege to be fraudulent. He was a witness below, called and examined by claimants, and cross-examined by the United States. A proper interrogation of him, with other witnesses, would have dissipated or established these suspicions. Under the circumstances it would be gross injustice to claimants to allow a charge of fraud, made for the first time in this Court, to affect its decree. In the Larkin case, 18 Howard, 561, the Court refused to entertain the same allegation under like circumstances: So too, in the Johnson case, 1 Wallace, 329, the Court say: "When there is any just suspicion of fraud or forgery, the defense should be made below."

2d. The allegations of fraud are not sustained by the Record.

Before considering the items of alleged fraud, I invite the attention of the Court to the evidence by which the claimants proved their several title papers.

(1.) The official character of Armijo, the Governor, and Pino, his Secretary, and their signatures to the grant, were proved by Duran and Donaciano Vigil, whose opportunities for knowing their signatures, and whose credibility as witnesses were excellent, (Record, page 44, 50.) Armijo, the Governor was dead then, and Pino absent, (Record, page 50.)

(2.) The same witnesses prove the decree of the Assembly confirming the grant, by testifying to the official character and signature of Chavez and Quintana y Rosas, both since dead. (Record 44, 50.)

(3.) The order of the Governor to Chacon, signed by Nicholas Quintana, his Secretary, (not Nicholas Quintana y Rosas, who was Secretary of the Assembly,) to put the grantees in possession and make out and deliver the necessary title papers, is proved by D. Vigil and Chacon, who testify to the official character and signature of the Secretary. Chacon says, the order was brought to him by the Secretary in person, (Record, pages 52 and 57.) The Secretary, when this case was being tried, (1862,) was absent in the army, (Record, page 57.)

(4.) The official character of Chacon as first alcalde of Santa Fe and judge of the first instance, and his signature to the several certificates, and his rubric to the suspensory order, (which papers are numbered from 5 to 9 inclusive, above,) are proved by Durand and Donaciano Vigil, (Record, pages 45 and 51,) and by Chacon, (Record, page 57.)

(5.) The naturalization certificate of Houck, dated 1832, was proved by Duran and D. Vigil, who testified to the official character and signatures of Santiago Abrew, the political chief, and Theodosias Quintana, his secretary, who executed it, both of whom were dead when the cause was tried below. (Record pages 46, 51.)

There was not a word or item of testimony in the slightest degree impugning the genuineness of these papers or the credibility of the witnesses by whom they were proved. Augustus Duran, one of the two principal witnesses, was Custom-house Receiver under the Mexican rule, and as such had correspondence with all these department officers, (Record, page 43,) paid their salaries and took their recipts, (page 47.) Donaciano Vigil, the other principal witness, was in government employ in New Mexico from 1824 to 1846. His character and standing are evidenced by the fact that he was secretary of the Territory (and for some time Governor,) by appointment of General Kearney, from 1846 to 1851, (p. 49.)

Of these ten papers, which make claimants chain of title, appellants directly question the genuineness of only one, to wit: the suspensory order (Record, page 100,) which is in Chacon's hand writing, and is attested by his rubric.

The execution of this paper was fully proved by Chacon and other witnesses, (Record, pages 45, 51, 57.) But counsel for appellants charge that it was fabricated and antedated with the connivance of one of the grantees, Juan B. Vigil, *after the* 15*th of February*, 1849. They are positive about the date, because they say the suspensory order was not recorded by Donaciano Vigil, when he recorded the title papers, (appellants' brief, pages 23, 24.)

Counsel discover a motive for the alleged fabrication in the paper, (Record, page 26,) purporting to be signed by Juan B. Vigil for himself and his associates, and by

Chacon, dated May 23, 1859, speaking of Chacon as one of the petitioners, and agreeing that he shall have one-fourth of the grant. This paper was not offered in the court below. If in evidence it would affect Chacon's credibility as a witness. But his testimony is not important, for every material fact he has sworn to was fully proved *aliunde*. It could not impugn the act of possession made 13 years before, for there is no intimation, even by counsel here, that Chacon was *then* interested or expected to be interested in the grant: and the full fee ($150) be charged for his journey, from Santa Fe, to put the grantee in possession, (Record, page 99,) would refute any mere *conjecture* of interest.

Counsel lay prolonged emphasis on the fact that Chacon's name is appended to the petition; and assert that it was fraudently signed there in 1859, at the date of the alleged agreement with Juan B. Vigil. That being the worst phase of the case for Chacon, I do not see that the question is worth elaborate discussion. It was an act of no possible effect on the title, except as it shows Chacon to lack sense and character, and so impairs his credibility.

If this suspensory order, alleged to have been fabricated, were rejected, the title would be unimpaired, for the order was wholly unnecessary. If there be any conditions to the grant, they are conditions *subsequent*, to be perfermed within five years. There was no abandonment of the grant, or breach of such conditions, or proceedings for forfeiture, within the *five months* which elapsed between the delivery of possession, March 15th, 1846, (Record, page 99,) and the proclamtion of General Kearney, taking possession of New Mexico for the United States, August 22, 1846, (Record, page 8.) This Court must declare this title as it stood when New Mexico

passed under the control of the United States. The law prescribes the same rules of adjudication for this case (12 Statutes at Large, page 72) that are prescribed for the adjudication of like cases in California, (9th Statutes at Large, page 633,) under which rules this Court holds that "*the question is, what right did the grantees acquire in the land from the Mexican authorities? The Court cannot inquire into any acts or omissions by them since those authorities were displaced.*" Hornsby *vs.* United States, 10 Wallace, 238.

There are two other papers in evidence which form no part of the chain of title, but yet greatly corroborate it. I consider them under this head, becuse they are connected, and because counsel for the appellants have characterized one of them as "a base fabrication." (Brief, page 33.) They are—

1st. The report of the committee of the Departmental Assembly, dated January 10, 1846, recommending the grant to be made, freed from the impracticable conditions proposed in the petition. (Record, page 93.) This paper is a copy certified to July 12th, 1846, by Sena, a member of the committee and its secretary. It is proved by Sena. (Record, page 60.) It is referred to and was, doubtless, inclosed in the other paper above referred to to wit:

2d. The letter to the Governor, dated 12th of January, 1846, from Gallejos, acting president of the assembly, and Quintana y Rosas, its secretary, announcing the action of the assembly, (Record, page 97.) The official character and signatures of Gallejos and Quintana y Rosas are proved by Gallejos, (Record, page 60,) who is

now a delegate in Congress from New Mexico, by Duran (Record, page 46,) and by Donaciano Vigil. (Record, page 52.)

These papers were part of the archives of the secretary of the department, and afterwards of the Territory. They were there doubtless with the retained set of title papers, and turned over to the Surveyor General when he was directed by the Secretary of the Interior, as above shown, under the 8th section of the act of July 22, 1854, (10th Statutes, 308,) to take possession of the archives relating to grants.

Counsel for appellants do not question the genuineness of this letter to the Governor. The letter refers to the decree of the Assembly as being in conformity with *the report of the committee.* It was not inappropriate to accompany the letter with a certified copy of the report which gave the reasons for not incorporating in the decree the conditions proposed in the petition.

Now what are the "intrinsic and extrinsic evidences" of the fabrication of that report—the letter to the Governor, in which it seems to have been inclosed, being admitted to be genuine? Counsel for appellants give the evidences thus:

1st. "It is grossly improbable, if not *impossible*, that the reference to the Assembly, the report and the decree should all have been prepared in one day." (Brief, p. 35.) It probably took the Governor, if he was an average penman and composer, about ten minutes to write the grant, and took the committee (leaving out any discussion of the project) about half an hour to prepare the report and form of decree. There were only seven members of the Assembly (Record, p. 48,) to advise with the Governor

as to grants in this remote and sparsely settled department. As the body was not unwieldy, or greatly pressed with business, it seems both possible and probable that it might dispose of a grant the same day it came from the Governor.

2nd. Counsel think that the report is "ridiculously improbable," because it proposes to relieve petitioners from their proffered conditions of building two penitentiaries and maintaining a military establishment on the grant, (brief, page 36.) But the *decree* relieved them of those conditions, and yet *its* terms were not thought to be "ridiculously improbable."

For these two reasons counsel denounce as a fraud this report of the committee, and, adding it to the alleged fabrication by Chacon of the suspensory order, and his absurd signing of the petition thirteen years after the grant was made, say that the whole title must be rejected as fraudulent—though every paper comprising the chain of title was proved beyond cavil.

FOURTH ERROR.

Appellants claim that the judgment should be reversed "because the grant being *conditional*, and the right to confirmation merely equitable, the claimants have no equity because of want of consideration arising out of a total failure to perform the conditions of the grant, either before or since the transfer of the sovereignty in New Mexico to the United States." (Brief, page 38.)

As stated by the court in Hornsby's case, 10 Wallace, 238, the only question to be considered and adjudicated is, "*what title did the grantees acquire from the Mexican authorities?*"

They got the grant, the approval of the Assembly, and juridical possession. No act remained to be performed by the Mexican authorities, no paper to be executed or delivered, no assent to be given. It was, therefore, a complete legal title: "*In se ipso totus, teres.*"

If there were any conditions, they were subsequent, and only made the grant liable to be divested by denouncement. But under the laws and usages of Mexico, *the government* could not denounce, though citizens might. Hence, the Mexican Repulic had no actual or contingent interest in these lands except of eminent domain.

The United States was subrogated to the rights, powers, and duties of Mexico respecting all property in the acquired Territory. Where a grant was incohate, our government perfected it by decree of its courts or acts of Congress, whenever, under a liberal construction of the laws, usages, and customs of Mexico, that government would have completed the title—looking into questions of occupation, abandonment, and performance of conditions *precedent*, as questions affecting the equity of the claim. But it never assumed to reduce or annul perfected grants. To have done so would have been a breach of the treaty and the laws of nations unparalleled in the dealings of civilized nations with acquired Territories and citizens.

FIFTH ERROR.

The fifth error alleged by appellants is, that the suspensory order (Record, page 100) is void, because made after August 22, 1846, when General Kearney took possession of New Mexico for the United States. (Record, page 8.)

This ground rests on the assumption of the fourth allegation of error just considered, to wit: that the grant was inchoate, depending for validity on the performance of conditions precedent, and that, without a curative act, it was null and void for non-compliance.

As I have already stated and shown the title is complete; the conditions are subsequent; there was no denouncement or cause for denouncement in the five months of Mexican rule following the act of possession; and hence the suspensory order was wholly *useless*. It makes no difference, therefore, whether it was also *invalid*, or not.

FIRST ERROR.

We will now turn back and consider the *first* error alledged by counsel for appellants, (Brief, page 8,) to wit: that the grant was made *without authority of Mexican law and contrary to its forms*. In support of this the following propositions are insisted on by appellants:

1st. That the consideration was illegal. It will be observed the grant is "for the purpose of constructing wells and *cultivating the lands*, as far as their means will permit," (Record, page 97.)

Appellants cite cases to the effect that, under the colonization law and regulations, no power was given to *sell* public lands. The first section of the regulations of 1828, gave the Governors of the Territories power to grant vacant lands to "either Mexicans or foreigners who may petition for them for the purpose of *cultivation or settlement*." The purpose named in the *petition* necessarily involved *settlement*, (Record, page 95,) and the decree expressly states that the grant is made for the purpose of *cultivation*. If the sinking of wells to facilitate

settlement of the waste Jornado was not of itself a legal consideration—a proposition I do not admit—yet it was not an *unlawful* one; and, excluding it, there remained the sufficient consideration of cultivation to support the grant.

2d. Counsel for appellants further object, that the grant was not made according to the regulations of 1828. They do not approve of the *form* of grant adopted by the Governor in submitting the petition to the Assembly. They object that there was no map of the Jornado, though its bounds were natural objects familiar to every New Mexican, to wit: the Rio Grande on one side and the Sandia Mountain on the other, from end to end of the famous desert. And they also object that there was no reference to *any* one to ascertain what was known to *every* one as to its extent and character. This class of objections have heretofore been summarily disposed of by this Court, and need no discussion now. (See Hornsby case, 15th Wallace, 237.)

3d. And, finally, it was objected that the quantity of land granted was illegal and excessive.

Admitting for the present that the twelfth section of the colonization law of 1824, fixes eleven leagues as the maximum of a grant, though made in a Territory, and to a Mexican, still this Court must decree in favor of appllees for the whole; because—

a. This case is to be decided, not by the *laws* only, but also by the usages and customs of Mexico respecting these grants, (12th Statutes at Large, page 72.) It was the *usage* in California to name the number of leagues granted, and to regard eleven leagues as the maximum

grantable to any one person. But in New Mexico the usage was different. Duran and Donaciano Vigil, who, had been for many years officials of the Department, testify that the custom which prevailed under the rule of Spain to grant by boundaries without regard to quantity was continued under the Empire, and afterwards the Republic, of Mexico, down to the acquisition by the United States, (Record, pages 55 and 59.) This statement is confirmed by the report of the Commissioner of the General Land Office, 1871, page 63, from which it appears that out of fourteen grants in that Territory confirmed by Congress in 1860, only five were for any given or even estimated number of leagues.

This custom had the assent of the Supreme government, because the grants were required by the 9th article of the regulations of 1828, to be reported by the Departmental Governor to the Supreme Government quarterly, and the presumption is they were so reported. Nearly all of them were by boundaries without regard to quantity, and among them were some grants notoriously in excess of eleven leagues. The Supreme Government made no objection, but permitted the usage to continue for over 20 years after the Colonization law was passed; and under it grew up all the titles of that country, existing when it was annexed to the United States. As Mexico recognized such grants, so will this court, for the customs and usages of the Departmental and of the Supreme Government are of equal rank with the laws of Mexico in determining the decision here. It makes no difference whether the custom so prevailing in New Mexico was in disregard of the colonization law; or whether the Supreme executive neglected his duties or overstepped his powers in permitting it; or whether such custom was peculiar to that department. If, in fact, this custom existed, and titles in New Mexico grew up under it then,

it must control the judgment of this court under the principles of decision established by the act which gives it jurisdiction of this cause.

Moreover, this custom has been recognized by the political departments of our Government. The Secretary of the Interior reported to Congress for confirmation many of the grants made under it; some of which were known to be largely in excess of 11 leagues, and the quantity of most of the others was wholly unknown. Yet with the facts understood, no question was made by either the Executive or Congress as to excess of quantity, and the grants were confirmed. (See report above referred to, p. 64.)

b. The grant vested a complete legal title to the whole tract in the appellees, and this court has no power to divest any part of it.

That this *is* a complete grant, is shown by the fact that no act remained to be done by the Mexican authorities to perfect it.

"An imperfect title is one which requires a further exercise of the granting power to pass the fee in the land." Paschal vs. Perez, 7th Texas, 367.

"No act of confirmation by the government was required or contemplated by the Colonization laws. *When the title of possession issued*, the government had done the final act on her part. Nothing remained to be done to consummate the title of the grantee, who was thereby invested with the legal seizin of the land in fee." Hancock vs. McKinney, 7th Texas, 452.

"That this fee was subject to defeasance if certain conditions were not performed, did not reduce it to that class of incipient equities which required recognition before

Supreme Court of the U. S.

DECEMBER TERM, 1871.

THE UNITED STATES *appellants*,
vs.
THE HEIRS OF JUAN B. VIGIL,
et al., *appellees.*

SUPPLEMENT TO MR. EWING'S BRIEF FOR APPELLEES.

When my brief in this case was prepared, I had not seen certain of the original title papers which have been selected out of the record below; and filed here with translations furnished by the Attorney General. They comprise:

1st. Three sheets of official paper, *numbered folios* 3 *to* 7.

I am satisfied from a careful inspection of the record that these papers (with the certificate of Houck's naturalization in 1832,) were the original and *only original papers filed by claimants.* They were attached to the claimant's petition to the Surveyor General, filed in 1859. (Record 10 to 14.)

a. The first sheet, (folios 3 and 4,) includes the petition, the grant and the decree of the Assembly.

b. The second sheet, (folios 5 and 6,) includes Chacon's certificate that he will put the grantees in possession; his order attaching copy of the Governor's letter to him, to claimants title papers, his copy of that letter; his certificate to the correctness of the copy; and his certificate that he had placed the grantees in possession.

c. The third sheet includes names of witnesses to the last named paper; certificate of Chacon that Houck had produced his naturalization papers, and was therefore a grantee; and the razon or suspensory order.

The originals selected and sent here also include:

2d. A sheet of official paper, marked 10. It differs from folios 5 and 6 in these particulars only.

a. The several officail acts are witnessed by Ramirez and Tofoya, while the witnesses on folios 5 and 6 are *Salazar* and Tafoya.

b. It does not include copy of Governor's letter to Chacon nor Chacon's certificate to copy.

c. It includes the certificate that the title is recorded, (see Record, p. 99,) which certificate is on neither of the other sheets.

Since these papers came here, appa rently, this sheet (marked 10,) has been inserted between folios 4 and 7, in place of the sheet marked folios 5 and 6, and so the papers have been fastened together and translated. That counsel in their devotion to their theory of this case have erroneously arranged these papers is obvious on examination. The printed record shows unmistakably that the folios 3 to 7, inclusive, are the original papers referred to in claimant's petition to the Surveyor General in 1859, and filed with it, (see printed record, pages 10 to 12 and marginal notes of folios.)

The sheet marked 10 was not filed by claimants. It belonged to the archives, as did other originals produced below by the Surveyor General, (Rec., p. 43,) but not sent here. That it is part of the retained set of title papers is indicated not only by its coming from the possession of the Surveyor General, but also from the fact, that it does not contain a copy of the Governor's letter to Chacon, a copy of which Chacon is directed to attach to the claimant's title papers, and did insert in folios 5

and 6, but which was not necessary in folio 10, because *it* was to be retained with the original letter, with which it was produced by the Surveyor General.

Hence, it is clear that the certificate of record is on the papers retained by Chacon. Those retained papers were doubtless sent by him to the secretary's office before his razon or suspensory order was appended to claimant's papers, which was six months after the title was perfected by the act of possession. (Record, 99, 100.) As this suspensory order was no part of the title, a duplicate may never have been sent to the secretary's office, or being there, may never have been recorded. The evidence does not show whether it was recorded or not.

THOMAS EWING,
Of Counsel for appellees.

they could become the foundation of an action." Edwards vs. James, 7th Texas, 370.

But it may be objected that no title passed to the grantees for the whole, because the quantity was excessive.

Though the quantity *be* "illegal and excessive," yet the title passed from the Government and vested in the grantees for the *whole* tract described.

White vs. Burnley, 20 How., 247.
17 Viner's Ab., 104 Pl., 21.
Owens vs. Rains, 5 Haywood, 108.
23d Texas 234, 25th Cal. 440, 29th Cal. 309.

Hence the grantees had a complete title to all the land within the limits designated when the United States assumed dominion over New Mexico.

The jurisdiction of the Court in this cause ends with the determination of this fact. It has power only to declare the effect on this title of the treaty; the law of nations; the laws, usages, and customs of Mexico; the principles of equity; and the principles established by its own decisions in like causes. All these furnish a guide to determine what titles are perfect and what inchoate, and authority to declare the action of the government on inchoate titles. To this function the Court is confined by the letter and spirit of the law, which gives it jurisdiction of this cause.

There is no allegation that the alleged excess is the result of fraud. Hence, not only has this Court no jurisdiction, but the United States has no right, to reduce or destroy this grant.

Overton vs. Campbell, 5 Haywood, 215, 216.
Owens vs. Rains, 5 Haywood, 108. 23d Texas 234.

Whether the United States,–there being no fraud in obtaining the alleged excess,–will descend to cutting down the titles of the people of New Mexico, perfected

and established under their former government, is a *political* question which must be decided by a new law, and suits begun under it, before this Court can enter on this ungracious task.

See White vs. Burnley, 20 How., 247.

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Of Counsel for appellees.